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## Legislative Assembly of Ontario

First Session, 35th Parliament

## Official Report of Debates (Hansard)

Thursday 19 December 1991

Standing committee on  
general government

Rent Control Act, 1991

## Assemblée législative de l'Ontario

Première session, 35<sup>e</sup> législature

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Le jeudi 19 décembre 1991

Comité permanent des  
affaires gouvernementales

Loi de 1991 sur le contrôle  
des loyers



Chair: Michael A. Brown  
Clerk: Deborah Deller

Président : Michael A. Brown  
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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON GENERAL GOVERNMENT

Thursday 19 December 1991

The committee met at 1024 in room 151.

### RENT CONTROL ACT, 1991

#### LOI DE 1991 SUR LE CONTRÔLE DES LOYERS

Resuming consideration of Bill 121, An Act to revise the Law related to Residential Rent Regulation / Projet de loi 121, Loi révisant les lois relatives à la réglementation des loyers d'habitation.

#### Section 13:

**The Chair:** The business of the committee is to review, clause-by-clause, Bill 121. When we completed Thursday, we were discussing subsection 13(4.1).

I had been running a list. Some of those members are not present at the moment. We will allow them into the discussion when they return. According to my list, of the members present, Ms Poole is the next speaker.

**Ms Poole:** My recollection is that when we adjourned last time we had been in the middle of discussing subsection 13(4.1), which was a government amendment which would basically say that if a landlord had both extraordinary operating expenses and capital repairs for which he or she wished extra remuneration through a rent increase in a certain year, the landlord could not claim both, and one of the things we were discussing at that time was the fact that there are ramifications from this. If the landlord had both extraordinary operating in a year and already had an order for capital repairs, and if the amendment said the landlord could carry those capital repairs forward to another year, then I would not have a problem with the amendment, because I know the government has said time and time again that it is committed to the cap and is unwilling to bend from that.

I say that is all well and good, but if you want to have capital repairs done, if you want to make sure that our buildings are kept to the standard that tenants have a good place to live in, then surely you do not want to discourage doing the capital repairs. With Hydro rates going up astronomically, with municipal taxation going up significantly, with all these extra expenses that are going up and the very real possibility that landlords would have to go for extraordinary operating, very few of them are going to be willing to commit themselves to putting money into the building in the way of capital repairs if they think there is no way they will be reimbursed. They will basically just lose that money.

I would also think it would make financial institutions very hesitant to lend moneys when they are not assured that the rents will be increased in a sufficient way to guarantee that the financial institutions will get their money back. So it really has a lot of ramifications that I am not sure the government has really thought out.

I know that as far as the extraordinary operating expenses are concerned, the minister and staff have said, "Yes, well,

it's a three-year moving average, so if there are large municipal tax increases they will be covered by increases in the guideline." But the increases in the guideline certainly do not reflect what kind of increases we may be subject to in the coming years. This past year has been a municipal election year and, lo and behold, a surprise to all of us, tax levels were kept at a very reasonable 5% to 6% increase in most cases. I can assure you that next year we will not have that same luxury, particularly in municipalities which have been very hard-hit by the increase in social services and welfare and have to take on a lot of that burden themselves. That large increase will not be reflected until after the fact, so there will be a lag, and in that lag the landlord is going to be in the position that if he claims the extraordinary operating and if he has done capital, he will not be able to get reimbursed for those capital repairs. The way the legislation is set out makes it quite clear you cannot do both, so what landlord is going to want to put major money into capital repair if there is a real possibility that he will not be able to get his money back? I am really very reluctant to support this amendment for that reason.

If the government were to say that in a year where there was an extraordinary operating increase the carry-forward would be allowed for a future year, then I think that would be reasonable. That would also ensure the landlord that, yes, if he does go and get an order for a rent increase due to doing those major repairs, he will have the funding in place to make sure he can continue to carry the building and to pay back his loans. So I have great hesitation in offering support for this amendment under its current circumstances and in the current way it is drafted.

1030

**Mr Winner:** I think I understand the point Ms Poole is making, but I would also add that in the years where the landlord wants to avail himself of the above-guideline increase, up to 3% for extraordinary cost increases, we cannot forget that the landlord will still be enjoying that 2% for capital repairs that is built into the guideline: 2% the first year, another 2% the second year, another 2% the third year, all cumulated.

I really cannot feel too sorry for the landlord in that situation. I feel much more compassion for the tenant who has to pay above guideline. I certainly do not think we can piggyback the capital costs on the extraordinary operating cost increase and come up with an increase of more than 8%; nor can I see why we should defer certain increases to accommodate both extraordinary operating increases and above-guideline capital repair cost increases, particularly because that miscellaneous allowance, that 2% for capital repairs that the landlord never really has to account for, unless it is under this act, where the landlord asked for more than guideline, is there to cover precisely the kind of contingencies I feel the member is addressing.



**Ms Poole:** To address the point that Mr Winninger just made, it sounds fine in theory because he is saying there is 2% built into the guideline for capital repairs. But if you look at the reality of the situation, a landlord does not have to justify that 2% unless he applies for an extra rent increase.

You have a landlord who does nothing in the building and gets the 2% for capital repairs, or you have a landlord who does spend the money and gets the 2% for capital repairs. They are both in the same situation. There is no incentive to that second landlord to do capital repairs. It is that simple. He gets the same money whether he does the capital repairs or he does not do the capital repairs. The whole point of having an additional 3% that the landlord could go to rent review for was to ensure that the capital repairs would be done and that the

landlord could do a significant amount in one year. But if you put them in the situation where that 3% extra will be forfeit, then they will not do it. It is that simple.

That is what we are talking about. Whether or not they do the capital repairs they get that 2%. What incentive is there for a landlord to go above and beyond and to maintain that building? I know my colleagues from the NDP will say, "Well, to maintain the investment value." I see at least one head nod, maybe another head half nodding, but that is not the issue here, because the investment value for rental apartment buildings in this province has gone down by a conservative 25%. These are not landlords saying this; these are real estate agents who are saying they have been devalued by 25%. A major portion of that has not been because of the recession; a major portion of it has been because of government legislation. The combination of the recession plus Bill 4 and Bill 121 has devalued these buildings, and there are a number of them that have been devalued by far more than that—40%.

As for maintaining the investment, many of these landlords have lost their investment, they have lost their equity. They have put significantly more into the building than the building is worth and it is going to be many years before that is recouped, if ever.

What incentive is there for a landlord to put more money into a building that he or she is already losing the investment on? There is not. That is the problem with this, because what it is saying to these landlords is: "You get the 2% in the guideline whether or not you do the repairs, but we are going to play Russian roulette for you. We are going to put the gun to the head and say we'll give you the 3%. You can go through the expense and the trouble of going to rent review, if you've done capital repairs, to get the extra 3%. However, you're not guaranteed that it's going to click on an empty—

**Mrs Y. O'Neill:** Barrel.

**Ms Poole:** "—barrel." I thank my colleague for Ottawa-Rideau. It is hard to think these days after the long nights.

At any rate, you cannot play Russian roulette, because no investor worth his or her salt, no business person is going to say, "I will do this on the off chance that my extraordinary operating will not be enormous and on the off chance that I will be able to recoup the 3%." They will

not be able to get the loan under those conditions, let alone go ahead and do the repairs.

I think this government amendment is ill-crafted and it is going to have ramifications that the government really does not want to see. They have talked about our aging housing stock, they have talked about the necessity for repairs. The bottom line is, pass this government amendment and you will ensure those repairs are not done. Not one incentive is there for the landlord to do it. The landlord is going to get the 2% whether or not he or she does the repairs. What incentive?

**Hon Ms Gigantes:** No.

**Ms Poole:** The minister says no. The minister does not comprehend that there is a guideline with 2% built in for capital and that does not have to be justified. The landlord does not have to come forward, give any itemized bills or prove he does the capital repairs, period. That is the end of the discussion. The landlord does not have to justify it.

So what incentive is there for that landlord to go above and beyond and do more capital repairs, go through the hassle of rent review and at the end of the day not know whether he is going to get the extra 3% to recoup what he has spent? It is easier for them not to do anything. I have heard all too many of them—well, not too many from my point of view but certainly too many from the government's. I have heard a lot of them say they are just going to wait out the term of this government, because this is going to be a one-term government. They will wait until they get a reasonable government and then look to investing in rental housing again. So you have guaranteed with this amendment that nothing is going to be done. Congratulations.

**The Chair:** Mr Turnbull, you were on the speaking list, a carryover from last Thursday.

**Mr Turnbull:** I have to agree with everything the member for Eglinton has just said. Whether the government likes it or not, this is nevertheless what landlords are saying. We are not just grabbing at straws. We have heard the odd person saying that. The vast bulk of landlords are saying they cannot operate under these constraints.

It is quite clear that there is a significant philosophical gap between the government and my party; that we accept. Putting that aside, we have to look at the reality of the ownership of these buildings. If the government were to be intellectually honest enough to say, "Look, our intent is to drive private owners out of ownership and we will buy up these buildings at significantly reduced prices," I would respect the government a little bit more. I would still completely disagree with them but I would respect them because at least they would have put their true agenda on the table. But this clause and others are having the effect that landlords are saying they cannot afford to take the risk of doing any significant capital repairs, so they will wait until such time as there is a rent review application, and if there are any work orders they will try to fulfil them.

How you can satisfy the capital requirements to repair an underground parking garage that may cost in excess of \$1 million with this clause is totally beyond me. It is quite obvious that not one of you has ever tried to sit down and do the mathematics of it, because it is totally impossible to



amortize it over the kind of time frame you are talking about—utterly impossible.

**Hon Ms Gigantes:** The agenda of the government is laid out in Bill 121. What you see is what you get.

1040

**Ms Poole:** One hundred amendments.

**Hon Ms Gigantes:** There is no secret theory about what we are doing, quite contrary to what is being suggested. This section is quite clear. We are all agreed on what it means; we are not agreed on the effect, and we have not, so far in this discussion, really looked at how it combines with other elements of Bill 121 to achieve what the opposition members claim they are concerned about.

I want to address one other side issue, the question of devaluation of rental properties during the last two years. If you look at the values that have been placed on other properties, quite apart from rental properties over the last two years, you will find that the values are quite comparable and the changes in the values are quite comparable. To go to the heart of the matter on subsection 13(4.1), we are having a discussion about whether it is fair for landlords to have to live with a guideline amount for such matters as municipal taxes and hydro when they are already getting either a current-year or roll-through-year increase above guideline.

I want to call upon opposition members to remember that while next year's guideline may not reflect next year's tax increase, this year's guideline under the current legislation—and the guideline will operate very much the same way—reflects high tax increases in the last two years at the municipal level. There is an averaging out. Everybody has to live with it on both sides of the fence. Tenants have to live with it; landlords have to live with it. What you are asking for here is a special allowance for landlords. Tenants are also in this equation. We think it is fair enough if we are providing—the current proposal in the government legislation—not two total years of above-guideline increase but three total years of above-guideline increase at the level of 3% for landlords. We think we are providing a pretty adequate balance of the interests and the costs here.

It has been proposed to us that there is no incentive for landlords to make an investment in capital repairs if they cannot recoup the cost of those capital repairs at the same time as putting in an application for above-guideline increases due to extraordinary operating costs. It is true that we have not presented any special incentive, but there is a disincentive in this legislation for landlords to neglect maintenance. It is the first time we have had legislation proposed in this province where we intend to make that disincentive effective. We are saying to landlords, "You will maintain your property in a livable, suitable way or you will not get guideline increases."

That is the point at which I interjected when Ms Poole was speaking when she said they can always get guideline increases. Not so, Ms Poole. You neglect the section of the legislation which says to landlords: "You neglect maintenance at your peril. You will not get guideline increases if you don't provide adequate maintenance."

So while we have not provided any special bonuses, we have certainly provided flexibility within the legisla-

tion, a total of three years during which above-guideline increases to the level of 3% may be permitted a landlord who has been able to justify capital repairs which are necessary in a building or buildings, and we have provided a disincentive to avoid the maintenance, which you claim you want. So I think you can feel assured that landlords will learn to operate within the system because they will find that while they are not being bonused, they have flexibility to do their repair and maintenance work and they will suffer a strong disincentive, including the possibility of rollbacks on rent, certainly not providing for guideline increases, where the level of maintenance is inadequate.

**Ms Poole:** I have to respond to a number of things the minister says, because it reflects a degree of—I was going to say one word but I will substitute it for a kinder one—lack of knowledge that I would not have expected from the minister, although I am learning to.

The first thing is about properties being devalued during current times, particularly the last year and a half, and the fact that the devaluation for apartment buildings has been similar to other comparable properties. If the minister knew anything about the rental market, she would know that the resale value of a building is based on the rents. It is one of the most stable of property values because of that.

It is not like other house valuations which fluctuate quite dramatically depending on all sorts of things, including the economy and whether the real estate market is hot or cold. It is extremely stable and it is basically not in the type of situation where you would have a 25% fluctuation. It is just unheard of. We are talking about income-producing property that in many ways is buffered normally from the vagaries of the economy. Obviously they are affected to a certain degree, but 25%? What the real estate agents are saying is that the most profound impact has been the government legislation. Notwithstanding that it is usually a very stable market, in this case people are anxious to dump their properties and they will take whatever they can get. That is the first point.

The second point: When she is talking about how the three-year averaging basically reimburses and takes into account all the vagaries of inflation, if she thinks municipal taxes have been high in previous years, it is just going to blow her mind when she sees what is going to happen in the years to come, because municipalities cannot, under legislation, incur a deficit. With astronomical costs they have no choice. They can only cut services, raise taxes or a combination of both. Even if they are willing to cut services, we are going to see increases the likes of which we have not seen before. There is going to be a lag.

The other point the minister made was with regard to inadequate maintenance. In a very self-righteous tone she said, "For the first time there is going to be legislation that is effective." Eliminating the guideline increase if there was inadequate maintenance is not a new concept. Two buildings in my riding had it done and had the guideline increases frozen. It was not under your legislation, Minister; it was under its predecessor, the much-maligned Bill 51. It was extremely effective, but the problem is, when I talked to the building inspectors, they said it is like trying to wring blood out of a stone. They said you get into a



catch-22 situation because in a number of instances where this is happening, the landlord has mortgages worth more than the building.

You can say to your heart's content, "This was a bad business decision," which is your usual comeback. I can say to you, "Deal with reality." The reality is that if the landlord is in financial jeopardy and then you freeze the rents so he cannot get the guideline increase, it is not helping the problem, because the basic problem is that if there is not enough money there to carry the building, no matter all the good will you want to put into it, you can bring down that heavy stick but you cannot wring blood out of a stone.

1050

I have had building inspectors who have said to me, because I have contacted them, "Why aren't you acting on this?" They said it becomes a catch-22 situation where you spend months and months trying to work on it with work orders, but the landlord does not have any money. In the final analysis, are you really protecting tenants? So when she is talking about the rent reductions and when she is talking about the guideline and that it is not assured, I can tell you it will only be the most serious of cases where it is not assured. A very strong case will have to be made before they are going to freeze those rents and say there is no guideline increase.

What you are going to find is that the major capital repairs will not get done. They are not going to be able to take the building to rent review and ask for a rent reduction, because the single-glazed windows which are allowing all the heat to escape and which make the apartment freezing cold—they will not be able to go and say, "Freeze the rents because he has not put in new thermal-paned glazed windows," or he has not replaced the boilers so that when you get up in the morning you can be assured of hot water. It is not called neglect; it is called certain things wearing down after a number of years.

You get to the stage where you say these things have to be replaced. Are you creating an incentive to replace them? The minister said, "We are not creating an incentive, that's true, but we are creating a disincentive." Then it becomes a vicious circle. You have to understand how investment works in the province, how the real estate market works and how rental housing works. It may sound fine and fair to say, "They should and we will ensure they will," but the problem is much broader than that and I do not think these Band-Aid solutions are really going to help.

I thought we had one of the best presentations in Bill 4 and again in bill 121 from the Stormont-Dundas-Glengarry legal clinic when they were talking about the necessity for the carrot, and the stick. We give them the incentive and then if they do not go for it, we use the stick. They said if you just use the stick without the carrot it is going to fail and the ones at the bottom who are going to suffer will be the tenants. What this legislation is doing is creating an adversarial front out there such as you would not believe. Well, maybe you would.

Some of you members must have tenants in your riding. If you had been out there at all and talked to them, you may have discovered that landlord-tenant relations are not in very good shape right now. They are terrible. We have a

lot of landlords who are saying to tenants, "I am not doing anything." These are landlords who used to get along with their tenants. I am at a loss because the minister does not seem to comprehend what the market is about, what rental property is about and the fact that saying it does not make it so. There are realities you have to deal with. You just cannot draft legislation in isolation and say it should be this way and therefore we will make it this way. You have to look at reality. The reality is if you pass this amendment, you have just killed any slim chance you had of landlords going for capital repairs.

I will come back to you in three years and I will say, "Look at the number of applications to rent review for that 3% increase." That will be when I prove my point, because they will be much lower, and what you will be saying as an NDP government is, "Look at the money we've saved, because look at the backlog; there's no backlog." Of course there is no backlog because nobody is going to put any money into the buildings. So congratulations, I really commend you on saving the system some money. We are going to need fewer bureaucrats.

**The Chair:** Through the Chair, please.

**Ms Poole:** I apologize for not going through you, Mr Chair. I hope the New Democratic Party members on this committee will remember my words several years from now and I hope they will not be too surprised when they are pointing out how smoothly the system is going when we point to the number of applications and say: "That's why the system is going smoothly. You've eliminated financial loss. You've virtually eliminated the applications for capital repairs. You've changed the face of it. You are right. You will give tenants one type of protection against rent increases, but it is at their own expense because they are not going to live in buildings that are as good and as comfortable and as well maintained as they are now. I am not talking about the ones that are slums. I have no use whatsoever for landlords who operate in those kinds of conditions and who abuse their tenants. I am talking about your average building where, if a landlord is on the verge of financial collapse, he is not going to be spending the money where it should be spent. Bring in your hammer, but it is not going to solve the problem.

**The Chair:** Thank you, Ms Poole. We have Ms Harrington and then Mrs O'Neill.

**Ms Harrington:** I want to make a couple of points about what the opposition is saying. First, I think we have to be very clear as to the outcome of what they are suggesting and that people in this province should know.

First of all, the intent of this section of the legislation is that there is a cap, and that is for this coming year. The increase is 6%. With the cap for extraordinary operating costs and/or capital costs, it will be up to 9%. What the opposition is saying is that this is not sufficient, that there should not be a cap of 9%, that the landlord, if he wants to do capital repairs and also has extraordinary operating costs, therefore should be able to charge more. That is exactly what they are saying.

**Ms Poole:** On a point of order, Mr Chair: What the member has said is—



**The Chair:** That is not a point of order.

**Ms Poole:** It is, because she has incorrectly attributed remarks to me.

**Hon Ms Gigantes:** That happens all the time, Ms Poole.

**Ms Poole:** I do not care. It is does not happen to me. It is very clear that is not what I am saying. I am saying they should be allowed to carry it forward to another—

**The Chair:** Ms Harrington has the floor.

**Ms Harrington:** Ms Poole says they should be allowed to carry it forward and just make it go on and on, which is one way of dealing with this. I am not sure where the Conservatives' position on this would be, but basically what both opposition parties are saying is that the cap at 9% is not enough. I just want to point out to the people of Ontario that if we allow both capital and extraordinary operating costs, then obviously it would be up to a 12% increase. What we are talking about in 1992 are people's rents for their homes, and I want everyone to think very carefully how many people across this province who are renting their homes would have an increase in their income of above 6%. Very few, I put to you, are going to have an increase of that magnitude.

I think the opposition may be missing the point here when they think this legislation is to enable landlords to be guaranteed the costs of their buildings. The intent of this legislation is to have some stability for the tenants—that actually means a cap—so that people know there are not going to be extraordinary increases, so they will not be evicted from their homes.

1100

I just noticed in the last few minutes something I do not think we have been doing in this committee in the year we have been together, and that is a tendency to characterize motives or intents behind what people are saying. It is only fair that we deal with the statements that are made here and not go behind and say why people feel this way.

I also want to point out that this is 1991, almost 1992, and let's deal with the reality of running a business in this province. Landlords are business people. I want to ask you and everyone out there, how many people in this coming year are going to have increases in their cash flow in their businesses, whether you think of a corner store or whatever business it is for a small investor? I submit to you that there are very few businesses where there is going to be an increase in cash flow and maybe these people are going to be lucky if they do not have a decrease. If they have the same level of business, I submit to you that maybe that is going to be quite lucky.

What we are dealing with here with landlords is a guaranteed increase of 6%. What the opposition is asking for is something over 9%. This is not the reality of businesses or small businesses in Ontario. So I would just like to make that clear in this kind of atmosphere that we live in, and that is the real world of 1992 in a recession in Ontario.

**The Chair:** Thank you, Ms Harrington. As we continue this rather broad-ranging discussion of subsection 13(4.1), we have Mrs O'Neill and then Mr Turnbull.

**Mrs Y. O'Neill:** I have listened very closely to what Ms Harrington has said and I find it very difficult, as I find the entire Bill 121 from the very beginning. The reason—and the minister used the word “disincentive,” but not in the context I want to use it—is that Bill 121 is built on the theory of disincentive. As far as I am concerned there will not be the quality or the quantity of rental properties that we need in this province as a result of this bill.

This bill, and certainly this particular section of it, totally ignores the fact that there is a marketplace component. There are tenants, there are landlords and there is the marketplace within which these people operate. That has a great effect on what rents can be charged, what properties are there and what kinds of things have to be done to properties to make them competitive or desirable to live in. There is not even thought in this bill, in my mind, about choices. I am sorry, that is what I think Ontarians want. Landlords are small- and medium-sized businesses and the minister's choice of word, “disincentive,” is kind of interesting because I feel that is what this entire NDP policy—no matter where you look, whether it is in the budget or whether it is in Ministry of Industry, Trade and Technology, there is very little incentive to do anything, so the opposite, disincentive, is there on almost every policy, particularly with small- and medium-sized businesses.

We have had enough landlords—and they are still going to the media all the time, and many of them with the support of their tenants, may I say—who say they cannot live by this kind of legislation. Their wives have had to go back to work. They are not getting any income from properties they bought for that purpose and, in many cases, maintain themselves.

I find the rhetoric around the tenants—tenants need housing and people provide housing. The only housing in my riding right now that is getting any kind of improvement, and I am talking about energy-saving improvement, is that which is run by the housing authority. I find that is not the way in which Ontario was built. Ontario was built by people helping themselves when they could and making an income they can depend on. Unfortunately, this bill is not moving in that direction.

**Mr Turnbull:** Let me try to go through all the various points that have been brought up. The minister totally tries to mislead this—

Interjection.

**The Chair:** You should rethink that choice of words.

**Mr Turnbull:** —is totally distorting the facts of this matter, and I believe “distorting” is quite parliamentary.

**The Chair:** And you withdrew the first phrase.

**Mr Turnbull:** I withdrew the first phrase. The watchers can draw their own opinions.

The suggestion that the reduction in value of apartment buildings in this province is totally parallel to the reduction in value of commercial properties is disingenuous, to say the least. There is a component—I am not suggesting there is no element of reduction in value that could be attributed to that—and that would be along the lines that capitalization rate expectations are higher now.



However, the basis upon which a value for the commercial property is driven—and minister, if you do not believe what I am saying is true, I think you should speak to your ministry officials, who will certainly have the sense to confirm that this is correct. The way a commercial property value is driven is you determine the income flowing from that building, and as the income goes down due to vacancies, so goes the value. As you have high vacancies generally, it drives down the whole value of a market segment.

However, in this particular case it is almost entirely due to legislation that values are going down in the respect that you have legislation which controls the ability of landlords to be able to make any money—not a profit, but any money. Many of them are losing money significantly at this moment.

The vacancy rate is extremely low in this province. Therefore, the income that is coming to these, the gross income, has not gone down; it has gone up because of the guidelines. I emphasize it has gone up. If you know anything about appraisal, anything whatsoever, you cannot make the statement that it is based upon a general trend in the country, because that is just patent rubbish.

The Canadian bankers came in here and they gave the lowest assessment of any group that suggested that the reduction was due to this bill. They suggested 15% of the value of buildings had been reduced as a result of this bill. All the other groups suggested anywhere between 20% and 40%, but the most commonly used number was 25%. The Canadian bankers, who were very small-c conservative in their estimates, said 15% as a result of this bill.

Turning to the other comments that have been made, there has been a total ignoring of the point that has been brought out about major capital repairs such as underground parking garages and the fact that it is totally impossible if you have to repair the whole of an underground parking garage to get it back within the prescribed period of time—impossible. Therefore it will not happen.

You have ignored the fact that we have two types of buildings. We have older buildings which have been renovated, or new buildings, and on the other side we have older buildings which are unrenovated. The unrenovated buildings are typically the ones with lower rents.

The constituency of people in older, unrenovated buildings and newer buildings is totally unrelated to income. Unfortunately, a lot of the people who are least able to pay rent are the ones who have to go into the higher rent buildings because of the fact that there is a lack of apartments. Therefore there is more availability of expensive apartments than of the cheaper ones.

Every time anybody comes forward with any hocus-pocus and starts talking about cash flows and does not understand the underpinnings of this bill, he does a disservice to this government and to the people of Ontario. I have tenants who cannot afford the rent they are paying now. This bill does nothing to help those people, but it certainly does a lot to help those who drive Mercedeses and BMWs and live in rent-controlled buildings. These people are going to get the benefits.

It is very significant that Jeffrey Freedman, who wrote for the Toronto Star and was a great tenants' advocate, and

still is to my knowledge, and for many years championed rent controls, finally decided that rent controls do not work and wrote a very strong article in the Toronto Star suggesting that they were not working in this province. We were getting no buildings built other than the non-profit co-ops funded by government tax dollars, which are costing typically 150% of what the for-profit sector could create those buildings for. He damned rent controls and was sacked by that socialist paper as a result of it.

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The fact that you choose to ignore the difference in the cost of maintaining an older building which has not been renovated and a building which has been renovated totally shows to me that you are not interested in solving the problem. You are more interested in some socialist rhetoric, and I frankly say what socialism did in Britain was destroy Britain. Thank God we got a good dose of Thatcherism to shake it up. That is what will happen in this country unless you wake up now.

**Mr Winninger:** What happened to Thatcher?

**Mr Turnbull:** She was in office for more than 10 years, that is what happened to her.

**Mr Abel:** Look at what happened to England.

**Mr Turnbull:** England is a lot better off now than—

**The Chair:** No, we are going to debate 13(4.1). The discussion has been broad-ranging, but not that broad. Mrs Marland.

**Mrs Marland:** I would like to refer to some comments made by this minister in a rebuttal to me on this subject of whether any of these sections and their applications make any difference as to the age of the building. The minister had said that just because a building is 30 years old does not mean it is going to cost more in repairs or to operate. That is one of her several quotes she made the day that Ms Poole and I were asking her to be reasonable and understand that the age of a building is relevant. Another quote I would like to remind the minister of is where she said again, "The age of the building is not the most relevant factor."

What I find particularly interesting is that although I argued that the age of the building is relevant, I was arguing purely from a base of common sense. I am not a landlord of a residential building, but I have relatives who live in apartment buildings, rental accommodation, and a lot of friends, and I spend a lot of time going in and out of rental accommodation of various ages. From a commonsense point of view, I thought I was correct in saying that older buildings do cost more to maintain and to repair. We are not even speaking of renovations, but just general maintenance and repair.

When I made this point with the Minister of Housing I would have thought that since Housing is this minister's portfolio and it is far more her responsibility and she has a wealth of expertise behind her with the ministry staff—her own personal expertise may not be in that area, which I respect. I know that when MPPs are appointed to cabinet they do not necessarily have any relative experience in the portfolio to which they have been assigned, but I know that by the time you have been a minister for six months,



with the kind of staff our ministries have, there is no reason why a minister could not be brought up to speed, because there is no question that the ministry staff do have the expertise.

Anyway, I thought it was very interesting to come across a publication by the ministry of which this minister is in charge, and it is a consultation paper from the Ministry of Housing, published in February of this year. The title of the paper is *Rent Control: Issues and Options* and, lo and behold, on page 76 there is a pie chart dealing with rental stock, and beside the pie chart is a description of the percentage of Ontario rental stock. For example, it says that the Ontario rental housing stock is aging. It says that 65% of Ontario's rental stock is more than 20 years old. This legislation is going to apply to everything in this province, so here is the ministry document saying that 65% of the buildings to which this bill applies are already 20 years old.

But it is the next paragraph that is really significant, because it supports the argument I was making and totally contradicts the argument the minister made, and the statement is: "Age of building has an important bearing on the condition of the rental stock. Generally, the older the building the greater the need for repairs and maintenance."

Is that not interesting? It is particularly significant—not because it was my argument; it is coincidental that it was my commonsense argument that made that statement—that this minister, who is responsible for housing in this province—mind you, she is only interested in rental housing.

**Mr Turnbull:** It is pretty depressing, is it not?

**Mrs Marland:** She is only interested in rental housing and non-profit housing. She is not interested in helping the private sector and helping people to get into a position where they can afford to buy their own homes. We know that.

There is a statement by Mr Dan Burns, who, I would suggest, as Deputy Minister of Housing, speaks for this minister, and he says that the four main thrusts of his ministry are rent control, non-profit housing production, management of government-owned land, review of the Ontario Housing Corp and a public housing work plan, so we know where this socialist government stands in terms of helping people invest in their own equity by being able to afford to buy their first little home.

In any case, I think that for this minister to contradict both the member for Eglinton and myself on the relevance of the age of buildings when we are talking about the need to spend money on repairs and maintenance is deplorable, and I think it is just great that her own ministry has a paper that confirms the position which the member for Eglinton and I were trying to make with this minister about three weeks ago.

I think that is a depressing commentary on the outlook for the people of this province, with someone in such an important role as Minister of Housing who does not know anything about housing and who is responsible for this rather drastic, draconian piece of legislation that is before us, and as we go through every amendment—and we happen to be dealing with a government motion now, subsection 13(4.1)—this argument and these facts have to be repeated

over and over again, because it is relevant that we are in this situation with Bill 121 before us, from a minister who, from her own words, says that there are still matters that she has to think about with this legislation, and then those matters that she has thought about and tells us about are totally inaccurate. Those are my comments at the moment on this section.

I did make comments on this section last week on why I am opposed to this amendment. The amendment actually, as far as I am concerned, makes a sham of the exercise of saying to property owners, "We'll give you 3% to spend on capital improvements, and we'll give you two years to pay for it, but the second year you don't get anything of the normal 2% that you are allowed to spend in that category in terms of a rent increase." You see, the worst part is that for the tenants to pay a 2% increase on their rent in order to have a building that is well maintained, that is clean, that the carpets are replaced if necessary, or the walls are painted if necessary—whatever it is. We are talking about minimal maintenance here. You ask tenants and they would rather pay that 2% more to have that kind of accommodation that they live in, that is their home. Two per cent on their rents, individually, they would not be concerned about, but 2% for the property owners on all of the rents is the difference between them being able to afford something and not being able to afford it.

**The Chair:** Is it the pleasure of the committee that subsection 13(4.1) carry?

**Mrs Marland:** No, can we have a recorded vote, please?

**The Chair:** We can do that.

**Mrs Marland:** Actually, I would like 20 minutes to get my colleague back.

**The Chair:** We will have a 20-minute recess. We will return at a quarter to.

**Ms Poole:** Mr Chairman, the steering committee was to meet at 12. Could we meet now, in this 20-minute inter-session?

**The Chair:** We are missing one of the members, but we can do that, if we can work it out. The committee is adjourned until a quarter to 12.

The committee recessed at 1123.

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**The Chair:** The committee will come to order. We have a vote on subsection 13(4.1).

The committee divided on whether subsection 13(4.1), as reprinted, should stand as part of the bill, which was agreed to on the following vote:

**Ayes—6**

Abel, Gigantes, Harrington, Mammoliti, Waters, Winninger.

**Nays—4**

Marland, O'Neill, Y., Poole, Turnbull.

**The Chair:** The next section we need to consider is subsection 13(4). Questions, comments or amendments?

**Hon Ms Gigantes:** This clause is the same kind of clause as has been in application for four years under rent



review and it indicates the amount of notice that shall be given in order for a rent increase application to be made.

**The Chair:** Further questions, comments or amendments? Seeing none, is it the pleasure of this committee that subsection 13(4) carry?

**Mrs Marland:** Excuse me, just a moment, please.

**The Chair:** Yes, Mrs Marland. I am sorry, Ms Poole. I have got ahead of myself. Mrs Marland.

**Mrs Marland:** I am just reading this, thank you.

**The Chair:** Fine, then Ms Poole.

**Ms Poole:** I would acknowledge the assistance of Peter Libman from the landlords' self-help group, who brought this not only to my attention but also to the attention of the ministry staff. The way it was worded previously might have meant that rent increases would be in effect for a 15-month period, just because of the drafting.

**Hon Ms Gigantes:** Mr Chair, on a point of order: I believe the member is directing her comments to subsection 13(5) rather than subsection 13(4), which we are now considering.

**Ms Poole:** Have we not—

**The Chair:** No, we are dealing with subsection 13(4). I apologize for the order, but that is the one we are dealing with, which is, "An application under this section shall be made at least 90 days before the effective date of the first intended rent increase referred to in this application."

**Ms Poole:** Mr Chair, was there any particular reason why we did 13(4.1) before 13(4)?

**The Chair:** That is exactly the point. There was no particular reason.

**Ms Poole:** So my confusion is well founded. Okay, thank you.

**The Chair:** I am sorry for the confusion.

**Mrs Marland:** We are not only going backwards in the province with this legislation, we are now going backwards in dealing with the amendments.

**Mr Abel:** Now, now, be nice, Margaret. Be gentle.

**Mrs Marland:** Can we read it so we all know which one we are dealing with?

**The Chair:** I just read it.

**Mrs Marland:** My copy of the bill does not have an arrow above 13(4).

**Ms Poole:** It is not a change.

**The Chair:** It is not a change, Mrs Marland. We just have to carry the section.

**Mrs Marland:** Okay. I am opposed to this.

**Mr Abel:** We are not surprised.

**Mr Mammoliti:** You told us you have not even read it.

**The Chair:** Mrs Marland has the floor.

**Mrs Marland:** Now that I have read it, I am opposed to it. I read actually faster, I guess, than Mr Mammoliti. To read 13(4) was quite easy.

**Mr Mammoliti:** It is a good thing you understand it then.

**The Chair:** Are there further questions or comments?

**Ms Poole:** Call the question, Mr Chair.

**The Chair:** Is it the pleasure of the committee that subsection 13(4) carry? Carried.

Subsection 13(5): This is a government amendment, so it is as the bill is printed. Subsection 13(5), Ms Poole, or first could we provide the minister with an opportunity to explain this?

**Hon Ms Gigantes:** This was in fact the change Ms Poole was referring to. As the bill was originally presented, it would have allowed a landlord to apply for an increase in rent only every 15 months. This is a correction, one of those technical amendments to which we referred earlier, which says that the landlord can apply in any 12-month period.

**Ms Poole:** At the risk of repeating myself, but at least this time it is with the right section, I wanted to thank Peter Libman from the landlord's self-help group for bringing this matter to our attention, the fact that the way the wording and the drafting of the clause had gone before, there might be misinterpretation that the landlord would be entitled to file an application for an increase every 15 months, which was certainly not the intention of the legislation. We will be supporting this particular amendment.

**Mrs Marland:** We are supporting it also.

**The Chair:** Is it the pleasure of the committee that subsection 13(5) carry, as printed? Carried.

**Ms Poole:** On a point of order, Mr Chair: I would just like to note that we have reached unanimity at least on one section of this bill.

**Mrs Y. O'Neill:** A milestone.

**The Chair:** Subsection 13(6): questions, comments or amendments? Is it the pleasure of the committee that subsection 13(6) carry? Carried. Subsection 13(7).

**Hon Ms Gigantes:** The government has an amendment to place on subsection 13(7), and it is as a result, I am sure members of the opposition will be gratified to note, of proposals made for amendment to this section by members of the opposition. Essentially, the original printing of the bill defined what is happening in this section by reference only to other sections and it was the proposal, through proposed amendments of members of the opposition, that in fact we should spell out exactly what is happening in this section.

**The Chair:** Excuse me for a moment. Do members have a copy?

**Hon Ms Gigantes:** I believe so. This one?

**The Chair:** No, that is a Liberal motion.

**Ms Poole:** The government tabled a new set of amendments that were not printed in the revised bill, and I think this is part of the new, not necessarily improved package.

**Hon Ms Gigantes:** So I should move it.

**Ms Poole:** I think so, yes.

**The Chair:** Yes, thank you. I was just trying to clarify that.



**Mr Winner:** On a point of clarification, is the amendment that we are referring to now in the reprinted bill?

**The Chair:** No, it is not.

**Mr Winner:** Because I do not see it in my binder, either.

**Hon Ms Gigantes:** It has been tabled.

**The Chair:** Maybe the minister could read it in while the clerk is distributing it to members who do not have that particular amendment.

Ms Gigantes moves that subsection 13(7) of the bill, as reprinted to show the amendments proposed by the minister, be struck out and the following substituted:

“(7) Before making an order on an application under this section, the rent officer shall consider whether the amount of the increase should be limited or the maximum rent reduced because of,

“(a) an inadequate standard of maintenance or repair of the residential complex or of a rental unit in it;

“(b) a discontinuance or reduction in the services or facilities provided in respect of the residential complex or a rental unit in it; or

“(c) an extraordinary decrease in operating costs for municipal taxes, hydro, water or heating for the whole residential complex.”

**Hon Ms Gigantes:** As I mistakenly, in terms of procedure before the committee, began to say earlier, this is really to make very clear for anyone referring to the bill exactly what matters are being addressed in subsection 13(7), where previously subsection 13(7) had made reference to other sections of the act. We think this is clearer. We are pleased to have been prompted to do this by suggestions from the opposition.

**Ms Poole:** I thank the minister for the acknowledgement that it was a concern of the Liberal caucus that the bill was not specific enough nor very clear as to what was meant by the section as previously outlined in the bill. I, in turn, would like to acknowledge the assistance of the Tenant Advocacy Group, which was very helpful in bringing this to my attention and which certainly helped considerably in the drafting that we presented. The government amendment is substantially the same as the Liberal motion, our amendment to subsection 13(7), so we will be withdrawing ours and supporting the government amendment.

**Mrs Marland:** As you notice, Mr Chair, we also have an amendment to this same section, but I do not think our amendment has been recognized by the government amendment. I wonder if the minister could give us an example of an “inadequate standard of maintenance.”

**Hon Ms Gigantes:** I am happy to address the question of the difference between the government motion supported by the Liberal members of the committee and the proposal which had been put forward by the Conservatives. The question really is one of whether the application of these tests of the suitability of an application for a rent increase shall be mandatory or permissive. You will note that the original legislation, then the reprint and the amendment

supported by the Liberals all set out these standards as mandatory tests. In other words, there shall not be a rent increase unless these tests are made. What the Conservative motion proposes as an amendment is to make them permissive. In other words, the rent officer might or might not consider these matters.

We consider it critical to the operation of the legislation that it be known what tests will be applied to the applicability of a rent increase or a request for a rent increase, and we therefore do not accept the proposal that has been put forward by the Conservatives.

Mrs Marland has gone on to ask us to define adequacy and “inadequate.” As has been discussed, these matters, which have been discussed before in previous sections that we have dealt with before committee, will be determined by the rent review officer.

**The Chair:** Thank you. Mrs Marland, would you care to make your amendment to the amendment now and put it on the floor? We will deal with it and then with the question of the government amendment.

**Mrs Marland:** I would be happy to do that, Mr Chairman. However, whether my amendment is accepted or not—and I am not at all optimistic that it will be, having just heard the comments of the minister—in either case and in either wording of this amendment, my wording or the government’s, I think the minister should be able to answer my question. I am not repeating a question I have previously asked this minister. I am simply saying that whether the wording is “shall” or “may,” which would be my amendment, it still applies to clauses (a), (b) and (c), so I would like the minister to give me an example of an “inadequate standard of maintenance.”

**The Chair:** Mrs Marland, because it is 12 of the clock, and in order to have a debate on this, I think it would be useful for you now to move your amendment. Then we will discuss this in total at 3:30, just to be procedurally helpful, and given the hour.

**Mrs Marland:** I will be happy to do that then. My amendment would be the same wording except that under subsection 7 where it says, after the comma in that sentence, “the rent officer shall consider” and so on, I would amend it to say, “The rent officer may consider whether the amount of the increase should be limited or the maximum rent reduced because of” the following, (a), (b) and (c).

**The Chair:** So to understand you, you are moving that subsection 13(7) of the government amendment be amended by striking out “shall” in the second line and substituting “may.”

**Mrs Marland:** That is right.

**The Chair:** Thank you. I think, given the hour, we will pick up this conversation at 3:30. Before we adjourn, however, I would note that the subcommittee met this morning. There will in future be a report, but the purpose of the subcommittee meeting this morning was to discuss, pursuant to standing order 123, a request by the Liberal caucus to consider a matter of concern. We are adjourned.

The committee recessed at 1204.



## AFTERNOON SITTING

The committee resumed at 1554.

**The Vice-Chair:** I believe, Mrs Marland, you have the floor, speaking to one of your amendments placed prior to adjournment.

**Mrs Marland:** My amendment addresses the question of the mandate being given to the rent officer in the government motion. That is why my amendment was to change the word "shall" to "may." Because of the strength of judgement being given to the rent officer in this government motion, I think we should have some tone of flexibility in this amendment. I did ask the minister a question, to which I am still waiting for the answer, on this amendment. I will ask the question again.

It says, "Before making an order on an application under this section, the rent officer shall"—in the government's words, or "may" in my words—"consider whether the amount of the increase should be limited or the maximum rent reduced because of, (a) an inadequate standard of maintenance or repair of the residential complex or of a rental unit in it."

I would like the minister to describe what clause 13(7)(a) might refer to, as an example.

**Hon Ms Gigantes:** An existing outstanding work order might be an example.

**Mrs Marland:** Am I getting just the one example?

**Hon Ms Gigantes:** Yes.

**Mrs Marland:** How would an inadequate standard of maintenance without an outstanding work order be described? I understand outstanding work orders, so I guess we need to know what an inadequate standard of maintenance might be.

**The Vice-Chair:** Is that a question, Mrs Marland? Do you want a definition?

**Mrs Marland:** Yes, because we are voting on this very significant section and I think we need a definition.

**The Vice-Chair:** I was just clarifying that this was a question you were putting to the minister.

**Hon Ms Gigantes:** There are many examples that could be given in a general sense. It would depend on the case that was before the rent officer. The rent officer would consider the state of maintenance and the question of repairs which might be required, whether or not there was a work order, and make an assessment of that.

**Mrs Marland:** Minister, we are talking here about language used in your bill. You use the words "inadequate standard of maintenance." In fairness to the public in the province, I think you should be able to give an example of what an "inadequate standard of maintenance" might be.

**Hon Ms Gigantes:** I just did. If we want to go further, I think what the member is asking for is to provide wording that would cover each particular situation that might be brought before a rent review officer. That obviously is an impossibility. We will make no attempt to do that. The mandate of the rent officer under this legislation is to make a judgement on whether "an inadequate standard of main-

tenance or repair" exists and to determine therefore the eligibility of an application.

**Mrs Marland:** You said you gave me an answer. The answer you gave me was that it was up to the rent officer to establish what is an inadequate standard of maintenance.

**Hon Ms Gigantes:** I gave you one example.

**Mrs Marland:** Yes, one pertaining to a piece of work that required a work order.

**Hon Ms Gigantes:** Yes, but there are many situations in which work needs to be done where a work order has not been issued. There are many municipalities around this province that do not issue work orders. Therefore, we are providing language so that a rent officer will consider the state of maintenance or repair when judging the eligibility of an application for an increased rent.

**Ms Poole:** May I ask for a supplementary on that, with Mrs Marland's permission? The minister gave as an example an outstanding work order. In your estimation, would all outstanding work orders be deemed to be inadequate maintenance?

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**Hon Ms Gigantes:** Those that are related to health and safety under this legislation.

**Ms Poole:** So any outstanding work orders related to health and safety would be deemed to be inadequate maintenance?

**Hon Ms Gigantes:** Yes, they would.

**Ms Poole:** As long as the work order is outstanding?

**Hon Ms Gigantes:** That is correct.

**Ms Poole:** What about the scenario of an underground parking garage?

**Hon Ms Gigantes:** Who has the floor here?

**The Vice-Chair:** Ms Poole is responding. You had responded and she—

**Hon Ms Gigantes:** I thought there was a supplementary question.

**The Vice-Chair:** Ms Poole is pursuing a supplementary.

**Mrs Marland:** I am allowing it; I agreed.

**The Vice-Chair:** Do you want to finish this? Then we will get back to Mrs Marland. Conclude your supplementary and then the minister can respond.

**Ms Poole:** We have heard from various expert witnesses that many times there is a difficulty with underground parking rehabilitation, to know how long it is going to take. Quite often there will be a work order on it and there will not be an adequate amount of time, simply because once they get into doing the work and into the concrete rehabilitation, they find it is much more extensive than they thought. In a case like that, where the landlord is attempting to do the work and the repairs yet cannot meet the deadline, that would be deemed to be an outstanding work order. It would be at the discretion of the municipality and the individual inspector whether they would extend that work order.



**Hon Ms Gigantes:** That is correct.

**Ms Poole:** Sometimes when there are backlogs, it takes some time in order to get that extension. Do you have any intention of clarifying the circumstances under which an outstanding work order would be deemed to be inadequate maintenance?

**Hon Ms Gigantes:** Always.

**Ms Poole:** In all circumstances?

**Hon Ms Gigantes:** As long as they relate to health and safety.

**Ms Poole:** Even if there are extenuating circumstances?

**Hon Ms Gigantes:** The extenuating circumstances are between the landlord and the municipality to work out. The landlord can appeal a work order at the municipal level. It is up to the landlord to make sure, if that is necessary, that is what he or she does.

**The Vice-Chair:** Ms Poole, if you want to pursue this line of questioning, you can do so after Mrs Marland. You can get back on the list, inasmuch as it was a supplementary.

**Mrs Marland:** I am quite happy to have the member for Eglinton complete her line of questioning on this matter. It is easier for both of them to have the continuity.

**Ms Poole:** Thank you, Mrs Marland.

This is one of the difficulties I have with the way the government has constructed the rent penalty provisions and the maintenance issues we will deal with later on, that there are extenuating circumstances where it is beyond the landlord's control and it is being dealt with.

**Hon Ms Gigantes:** What is?

**Ms Poole:** An outstanding work order. It is being dealt with, the time limit has expired and there is a lag before the work order is extended or anything is done to relieve.

**Hon Ms Gigantes:** What the legislation says in that case is that when it relates to health and safety, I stress again, the rent officer shall rule ineligible an application for an increase in rent above guideline until that matter is straightened out. It is the responsibility of the landlord to straighten that out with the municipality. We are talking here about something that relates to health and safety, in this instance with the work order.

**Ms Poole:** I can appreciate that. I am just saying there are instances in which the landlord involved is attempting to remedy the situation.

**Hon Ms Gigantes:** Then the landlord involved is going to have to wait to remedy the situation before having an eligible application. Can you tell me why we should be saying in legislation that we are setting a standard we expect in maintenance and repair—what we are talking about here in particular is a question relating to health and safety, where there is a problem of such a nature that the municipality has put a work order on—can you tell me why a landlord in that kind of situation should be eligible to go ahead and get an above-guideline increase?

**Ms Poole:** Perhaps the minister does not realize how common it is to have a work order put on. There are buildings that are extremely well maintained that might have a

work order put on, not because the landlord is unwilling to fix something but because quite often there is a communication—

**Hon Ms Gigantes:** Related to health and safety?

**Ms Poole:** Just a moment, Minister. Quite often, there is a lack of communication between the tenant and the landlord. That is sometimes the biggest problem. There is no requirement for a tenant to actually approach the landlord and ask for something to be repaired prior to going to the city and asking for a work order. One of the problems we have is that when you have a work order, it has varying degrees of what time it is going to take to repair it. Sometimes—and I have seen this happen—municipal work orders are put on that bear no semblance to reason. They are to do exterior wall work, they are given 30 days to do it and the order is put on in January.

**Hon Ms Gigantes:** Is that considered a health and safety question?

**Ms Poole:** It might well be, but if it is freezing weather and you cannot do the construction—

**Hon Ms Gigantes:** If it is a health and safety question—

**Mrs Marland:** On a point of order, Mr Chairman: I am having a great deal of difficulty hearing the questions and the answers. To participate in this committee hearing I have to be able to hear the questions and answers. The minister continually interrupts the person asking the questions. I think there is enough time that we can operate this committee so we can all hear.

**The Vice-Chair:** In fairness, Mrs Marland, I think everybody will take that under advisement. I appreciate that. On the other hand, there has been a fair bit of latitude on both sides, both with the minister and members of the committee. I seek to allow that to happen to the extent that it works. To the extent that it does not will make it much more rigid. I think for the time being if we could try to allow the members of the committee and the minister to conclude their comments and then respond, that would be helpful. I think Ms Poole was finishing a point, and then I will allow the minister to respond.

**Ms Poole:** If I can put my mind back to what point I was in the middle of. Maybe it would help if we just waited until the end of a sentence before any interruptions. I am quite willing to have give and take, but it is somewhat distracting when you cannot finish a sentence.

Going back to the issue of outstanding work orders, the problem in the minds of some people is that if there is a work order out on a building, they take that to mean their landlord is a bad landlord, the building is in a poor state of repair and there is inadequate maintenance. Sometimes it is a matter of health and safety, but sometimes, in order to remedy that work order, it takes a substantial amount of time. What I am saying is, particularly when you are dealing with things like concrete rehabilitation, one does not know how long that is going to take.

The other factor—and again building inspectors have talked to me about this problem—is that you can have an underground parking rehabilitation that costs \$1 million.



That is certainly not out of line at all. If the landlord does not have the money and cannot get the financing to do that immediately, then sometimes that underground parking rehabilitation takes longer than you or I might like, but the fact of the matter is, if the money is not there, it is extremely difficult to do it in a very concise period of time. I am not talking about a situation you might have in Parkdale or some areas of the city and province where you have a slum landlord, where it would not take a rocket scientist to figure out that the building was in a state of inadequate maintenance.

One concern I have, which we expressed earlier, about the meaning of "neglect" and "inadequate maintenance" is that we would like to see some criteria, some guidelines, for the rent officers as to what is meant by those terms. If the minister tells me this is going to be dealt with in regulation, which it quite often is, I have no problem with that, but I think it only fair that we see what those regulations are, to see whether we can agree with the criteria and with the definitions the minister and ministry have come up with. It is the type of thing you really do not want to leave to either the imagination or the individual opinion of various and sundry rent officers, who may have quite a variance as to what one or the other thinks, depending, as I mentioned at an earlier time, on their background and their perspective on certain things.

I have no problem with the government's amendment as it is stated here, but I would like to know from the minister if she intends to clarify in regulations exactly what is meant by the inadequate standard, what qualifies, what does not qualify, so that we all know and the public knows and the landlords and tenants know what precisely is going to be covered under this particular amendment.

1610

**The Vice-Chair:** I am going to allow the minister to respond to your question, but I want to remind you that we are actually at the present time dealing with the amendment put by Mrs Marland.

**Ms Poole:** Yes, I apologize, Mr Chair.

**The Vice-Chair:** I know there is some impact but we have strayed a little far from that with respect to your last line of questioning. In fairness, if the minister wants to respond, it is appropriate.

**Hon Ms Gigantes:** First of all, I want to make it clear that we are not dealing with everything at once here. If we are dealing with a work order that is outstanding, we are dealing with a work order which is related to health and safety. If there is a question about the length of time that a landlord has been given to comply with a work order, we are talking about the question of length of time that has been given to comply with a standard of health and safety.

I think you will have to agree that there is some reason to propose that in fact such a work order would be a good example of an item which should be considered in the decision around assessing adequacy of maintenance by a rent officer in any reasonable approach to trying to maintain standards.

The second point you raise is the question of how we define "inadequate standard." I suggested that the rent offi-

cer will use discretion. If you have proposals for a definition, I would certainly be willing to consider them. It is possible, of course, to consider some kinds of directives within regulation. I ask you whether you think that is going to help.

I ask that because if we try to define that this crack in the wall, this fallen-down step, this piece falling out of the ceiling constitutes inadequacy, we are not going to be able to name all the factors that should be considered. We will not be able to do it.

The other way that might be approached in regulation is to suggest a series of factors to be considered. We could list a long list in hopes that within that list we would be able to cover any and every thing which should be looked at by the rent officer.

The problem is that if we start this kind of listing either of situations or of factors to be considered, we are inevitably going to leave some out. It is the intent of the government to have, for the first time, legislation in this province which really does put pressure on to get adequate standards of maintenance and repair in rental buildings.

We think this is the best way to approach it. We expect from the people who are acting as rent officers an understanding of what is reasonable and what is not reasonable in the consideration of clause 13(7)(a). I feel confident that the operation of this section is going to be one which in fact bears out our proposals to make sure that before landlords receive above-guideline increases they get their houses in order, as it were.

**The Vice-Chair:** Ms Poole, I am going to ask that if you want to pursue it we set it aside for the moment. I draw to the attention of the committee members that we are at the present time dealing with the amendment put forward by the Conservative Party, if we can get back to that.

Any further discussion on that, Mrs Marland? Are we prepared to call the question on it? Let me know. If you want to proceed, we will proceed with your amendment.

**Mrs Marland:** I would like to proceed. The thing is, you cannot discuss the amendment in isolation of the conditions.

**The Vice-Chair:** I understand that, but we are wandering a little bit further afield.

**Mrs Marland:** I have agreed with the line of questioning of the critic for the official opposition. If we cannot be given even an example of what is inadequate standard of maintenance, then how can these rent officers do their job? If the minister is not willing to give us an example—I am not asking for a list. I am not even asking to have the example enshrined in the legislation. I am just asking for an example so that I can understand the intent behind this wording.

This minister says: "I've given you an example. It is where outstanding work orders exist." Then we hear, "It's outstanding work orders if they are related to health and safety." We already have two kinds of work orders now. The ones that are related to health and safety apply, and the others do not. Is that what you are saying?



**Hon Ms Gigantes:** In terms of the reduction of rent, what we are dealing with is work orders that—

Interjections.

**Hon Ms Gigantes:** It is quite clear in my mind—I do not know whether it is in Mrs Marland's mind—that there are some kinds of maintenance matters and repair matters which are of a serious nature. Some of them will be covered by an outstanding work order when subsection 13(7) is applied by the rent officer. Some of them will be cosmetic in nature, and I would expect that the rent officer would not judge them to be of great import as far as the application of clause 13(7)(a) is concerned.

We certainly do have some understanding, from the workings of the rental standards board under the current legislation, of the numbers of problems that tenants have experienced with maintenance and repair work. I do not propose that we restrict the assessment that rent officers make under clause 13(7)(a) to a list, nor do I propose that we restrict it to the consideration of a list of factors, because I think that will inhibit the useful application of this section in the way that this legislation means it to be used.

This legislation aims to provide tenants with the guarantee that landlords will not only not get but will not be able to apply for an above-guideline increase when there is inadequate maintenance or repair. The landlord has the responsibility, if there are work orders involved, to make sure that they are cleaned up. If there are not work orders involved, which happens many times because in a great number of municipalities there is not an adequate system of building inspection, then the rent officer will make an assessment of the situation and, on that basis, will determine whether a landlord is eligible to apply for an increase.

**Mrs Marland:** The minister is not willing to give a definition of inadequate standard of maintenance and yet she says to the member for Eglinton, "If you have proposals for a definition, I would be happy to consider them."

**Hon Ms Gigantes:** I would.

**Mrs Marland:** This is really the most ludicrous system I have ever heard of. This is your legislation, Minister. These are your words. It is your bill. It is your responsibility to explain the content of this bill to the people of this province. You have a nerve to sit there, as Minister of Housing, and suggest to any member of this committee—maybe you can ask your own government members—but I think for you to say, "If you have proposals for a definition," and not even give a definition yourself, then I cannot believe your attitude with this legislation. You are saying to us, as opposition members who are opposed to the legislation anyway, "If you want to propose a list of definitions, I will consider them."

We are simply asking you. These are your words. It is based on these words that your rent officers are going to do their job.

1620

**Hon Ms Gigantes:** That is right.

**Mrs Marland:** You will not even give an example. I do not know why you are so hairy-scared about giving an

example. I am not asking for a list of definitions, and I certainly hope you are not sitting there expecting the rent officers are going to develop the list through experience.

I want to get to the training of the rent officers, because that is a whole issue in itself about who they are and what kind of training they have. As I said last week, I have several pages in response to my question about who is going to be eligible to be a rent officer, to interpret this amendment we are discussing right now, but if you cannot even answer our questions about an example of an inadequate standard of maintenance, I would like to know, when this person goes to train for this job as a rent officer, who in the Ministry of Housing is going to say to these rent officers, "This would be an example of an inadequate standard of maintenance." When are these questions going to be answered?

**The Vice-Chair:** Do you care to respond?

**Hon Ms Gigantes:** Quite gladly. I have suggested that I have considered the question of whether we should name a long list, and it would be a long list, but I am convinced it would be an inadequate list of the types of examples of inadequate maintenance or repair that may arise in different situations around this province over time.

I have suggested to members of the opposition that I have considered that I do not think that is a good way to go about it. I have suggested to them that I have considered making a list of factors to be considered in guidelines. Again, I think the problem would be that the list would not cover situations we think should be covered, and I have proposed quite seriously that if there are other ways of approaching this subject members of the opposition can think of, I would be quite prepared to think about them. That is a genuine offer.

I have also given, quite contrary to what Mrs Marland has just said, some examples of what I think any one of us would agree would be inadequate maintenance, inadequate repair. It is the intent of the legislation to make sure that this matter influences the situation of landlords when it comes to the level of rents they can ask for from tenants. That is the intent of the legislation. I know Mrs Marland does not agree with that intent, but that is in fact the intent, and if she can think of a better way of carrying out that intent, we would be happy to consider it, aside from a listing of situations and a listing of factors to be considered.

**Mrs Marland:** Maybe you can tell me the real reason you do not wish to answer my question directly; I have asked it directly now three times. You said you have given some examples, one being outstanding work orders relating to health and safety. You also have admitted that a large number of municipalities do not issue work orders, and I can assure you that we might as well forget about landlords, property owners, ever getting any rent increases at all. There is no way you will have enough rent officers to deal with this problem in this province, because under this legislation, under this section, anybody is now going to be eligible to make an application and the rent officer is the person who is going to make the decision. I asked you how many rent officers you are going to have in the province.



What was the answer? How many rent officers are you going to have to implement this legislation?

**Ms Parrish:** Actual rent officers? I think about 100.

**Mrs Marland:** Is that the answer, 100 rent officers?

**Ms Parrish:** I can go back and find out the exact number planned.

**Hon Ms Gigantes:** I believe we tabled with this committee written answers to that question. I do not recollect the number at the moment. I believe Ms Marland will find it attached to the material she was looking at a moment ago that outlines the mandate of rent officers' qualifications and so on.

**Mrs Marland:** That is right, I do have that, but I do not believe I have the number of rent officers. I do have the qualifications for rent officers, but I do not see the number. But for the sake of argument, let's talk about if we have 100. Even if we had 200 or 300—I will wait till we get the number.

**Hon Ms Gigantes:** We do not have to wait, do we? Maybe somebody else has something they would like to say while she waits.

**Ms Parrish:** I apologize, Mrs Marland; I think it is going to take me a little while to find it.

**Mrs Marland:** I will wait for the number to continue that particular question. The point I am making is that even if we had 500, which is doubtful, we are looking, according to the ministry's own publication, as of July this year at 1,318,000 rental units in this province, and you are talking about 100 rent officers. It would be funny if it were not so pathetically sad, but you are delegating the implementation of this section of your bill. In fact, you are delegating the majority of your bill to the discretionary power to make a decision by a rent officer. I think the last figure I heard about the rent review board applications is that we have some 2,812 to be heard, and we are told that is going to take two or three years. How long do you think it is going to take? Do you have the answer approximately?

**Ms Parrish:** We are just confirming. I think about 100 is right, but I just wanted to get someone to phone back and confirm. I do not want to give you the wrong information.

**Mrs Marland:** So it is around 100. How long do you think it is going to take if you have 100? I might even give you the latitude to 150 or 200, if you want. How long do you think it is going to take with that number of rent officers and over 1.3 million rental units in this province? If you apply for a rent increase—and we are talking here about 2% of the eligible rent increase—how long do you think it is going to take to implement that section of this bill throughout the province?

**Hon Ms Gigantes:** I do not understand the reference to 2%.

1630

**Mrs Marland:** This is the section that is dealing with whether or not there would be a decrease in rent, right?

**Hon Ms Gigantes:** No, also an increase.

**Mrs Marland:** Pardon?

**The Vice-Chair:** I think the answer was that it could also be a decrease. Is that correct?

**Hon Ms Gigantes:** Yes, and it has to do with the landlord's application.

**Mrs Marland:** Right, landlord's application, okay. What this section says is, "Before making an order on an application under this section, the rent officer shall"—or "may," according to which amendment is accepted—"consider whether the amount of the increase should be limited or the maximum rent reduced...." So we are not dealing, I suggest, with just increase; we are dealing with decrease as well.

**Hon Ms Gigantes:** Yes, that is correct.

**Mrs Marland:** All right. We are dealing with increasing or decreasing the rent. We have 1.3 million rental units in the province, and is the answer 100 rental officers?

**Ms Parrish:** I am afraid it is not; it is 106, Mrs Marland.

**Mrs Marland:** Thank you for your accuracy, Ms Parrish. So we have 106 rent officers. That is incredible. You are bringing in a piece of legislation that is so powerful, and it is to be interpreted by 106 rent officers in this province. In the meantime, if a landlord is entitled to a rent increase, that application for increase can be held up—

I am going to wait until the minister is finished consulting, because I want to ask the minister a question and I want to know whether I am understanding this clearly. If a property owner who has rental units decides he has to have a rent increase, under this section of your legislation could he have a rent increase in the interim until a rent officer rules on whether or not the application is going to be allowed?

**Hon Ms Gigantes:** The answer is no. There is a 90-day notice period in the same section, as you are aware, and we are very hopeful, because of the way we have attempted to structure the sections of this legislation, that we will have much prompter adjudication on such matters than we have had under Bill 151.

I think Colleen Parrish has a note to add to the discussion around what your questions relate to in terms of the number of rent officers and the potential for delays or complexities that might overwhelm the number of rent officers.

**Ms Parrish:** The reason we have these provisions is essentially that in the act there are currently two things that could be happening. A landlord says, "I want to increase the rents for these reasons." At the same time, tenants may have decreases they want, either the extraordinary operating cost decrease or allegations that the landlord is inadequately maintaining the property. It would be far less efficient to have two separate hearings going on and it would also be quite confusing for the parties, because what could happen is that one hearing would do X, Y and Z and another something else, all at different time periods. It is far more efficient in terms of the rental process and the time and energy of the parties to put these applications together, and that is what it is really trying to do. This reduces the workload and the need for a lot of rent officers,



and it is also clearer to the parties, because all the issues get dealt with together. That is why those sections are there, because the tenants have the ability to have a separate application. The thought was that by putting them together, you are going to have a more efficient process and reduce the necessity for the number of hearings officers.

**Mrs Marland:** I understand that very clearly, and I agree that if there are two means of having either an increase or a decrease and there are two parties to it, it makes sense that both those applications or appeals are heard together. That is common sense. I agree with that. What I would like to know is how 106 rent officers are going to deal with the obvious demand. As soon as this bill is proclaimed I could wager any amount of money that we are going to have a floodgate of rejections of any rent increases at all because now, as a tenant, I have this clause that says, "(a) an inadequate standard of maintenance or repair of the residential complex or of a rental unit in it; or (b) a discontinuance or reduction in the services or facilities provided in respect of the residential complex or a rental unit in it; or (c) an extraordinary decrease in operating costs for municipal taxes, hydro, water or heating for the whole residential complex."

I think, actually, that last one is a real laugh. When is there ever going to be an extraordinary decrease in property taxes with this current socialist government? We certainly know hydro is going up and we know water and heat are not going to have an extraordinary decrease. So clause 13(7)(c) is hardly worth discussing.

If we cannot have a definition or even an example of what is a discontinuance or a reduction in service in these facilities, and we cannot have a definition or example of inadequate standard of maintenance there is no way, as far as I can see, you are going to get any rent increases at all until a decision is made by a rent officer.

I have an example here that I have just been given and it says: "I have a situation now where the tenant is aware of the new bill. They have asked for a new fridge and stove."—Why would they not if they were aware of this bill?—"These are in good working order. Everything in their apartment is in good condition. They just want new appliances or"—get this, and this is what is going to happen—"a rent decrease."

The quote following this example is, "I am afraid I have no control over my own destiny and I do not have the money or can finance an expenditure like this." That example is exactly what I have been giving for the last number of meetings we have had on this legislation. Of course a property owner cannot finance the expenditure without being allowed a fair rent increase because he sure as heck will not get the money from the bank. The banks and the lending institutions are not going to lend property owners money with the insecurity this legislation puts their property in.

We now say we are hiring 106 rent officers and we are going to say to them, "Make a judgement on this application," but we are not going to give them any examples. Does this mean that the rent officers are going to develop the examples against which these applications will be measured?

**Hon Ms Gigantes:** There is a series of questions and statements there and to try and deal with them all would be very difficult.

We have to recognize that in the situation where it is the intent to provide legislation where a landlord's right to an increase, or indeed the landlord's right to maintain an existing rent, is put in question, depending on the adequacy of maintenance and repair in the building—when we try and put that into legislation there will be plenty of objection. It will come, as it has in the case cited by Mrs Marland, from landlords; it will not come from tenants.

1640

Mrs Marland seems to think that every apartment unit in the province is going to require adjudication by a rent officer on an almost constant basis. There is going to have to be constant monitoring, some kind of—how would you say it?—electrocardiogram, apartment-cardiogram going on where we have to have a rent officer constantly taking the pulse of everything that is happening in rental units across the province. This is not the case. It has not been the case in the past that, in any given year, most landlords have made applications under existing legislation or previous legislation for above-guideline increases. In fact, the minority do.

It has also been the case, and quite well-established under the existing legislation through the Residential Rental Standards Board, that the number of landlords who consistently and constantly provide major problems for tenants because of the inadequacy of repair and maintenance is a relatively small number.

The landlords become kind of notorious within the administration of the system of rent control, or rent review as it currently is. They become notorious to members of this Legislature. They become notorious to building inspectors and municipalities across this province. They become notorious to the media within those localities, and each of us sitting here today can list the landlords who have really exploited the situation of tenants year after year with impunity.

They have done that in some municipalities that have good building inspection systems. They have done it in municipalities which have ineffective building inspection systems. They have done it despite the process set out under previous legislation. We are looking to move forward. We actually wish to make progress on this. We actually wish to see a change in this pattern. We want to see that these landlords have a constant concern about the disincentives that will be applied under this legislation to inadequate maintenance and repair.

We think this is the way to do it. We think the number of cases that are going to be called forward can be dealt with administratively in a reasonable period of time by reasonable people employed as rent officers. I do not wish to allow anybody listening to this discussion to believe that we are rushing out and hiring a whole bunch of new public servants to administer this legislation. We expect to be able to do it with people who have operated under previous legislation, by and large.

All in all, the amendment which was put forward in the Conservative motion changes "shall" to "may". I do not know how that satisfies Ms Marland because if we had



"may" instead of "shall" then that really would not change the situation as far as all her concerns about the discretion of the rent officer are concerned. In fact, it would add another element of discretion.

We are saying the rent officer "shall" look to these matters: inadequate standards of maintenance and repair, a reduction in services or an extraordinary decrease in operating costs. We are saying the rent officer "shall" take a look at those situations when receiving an application for above-guideline increase from a landlord. That is what it says and that is what it means.

To change that "shall" to a "may" is not going to solve your problem, Ms Marland, it is going to add another element of discretion and uncertainty about the response of the rent officer, and I put it to the Chair that we have discussed this question pretty well into a state of paralysis.

**The Vice-Chair:** Mrs Marland, I am going to ask you to consider that and deal with this again if you want to bring some new information or pursue it a little further. We will see how far we are going to go with it.

**Mrs Marland:** The situation that is going to be thrown into paralysis is rental accommodation in this province and if this minister does not understand it, I can understand it because this minister is not well informed about her ministry.

**Hon Ms Gigantes:** She can say that. I do not mind if she says that.

**Mrs Marland:** Mr Chairman, let's just deal with that question.

**The Vice-Chair:** Yes, let's deal with the amendment and see to that if we can.

**Mrs Marland:** All right. I am perfectly at liberty to make a statement about whether this minister is informed about her ministry. That is not unparliamentary.

**The Vice-Chair:** I recognize that, I am just asking—

**Mrs Marland:** It is important that—

**The Vice-Chair:** Mrs Marland, excuse me for a moment. I am just asking if you would, as much as possible, focus on the substance of the amendment to the amendment.

**Mrs Marland:** Yes. The minister has given some answers to this committee that were inaccurate and were contradicted by her own ministry documents. This minister told the committee that in terms of the cost of operating a building, the age of the building was not relevant. However, fortunately for us, the ministry staff are informed about whether it costs more to operate an older building or not, and there is a document put out by the Ministry of Housing which confirms that it is relevant. The age of the building is relevant.

**Hon Ms Gigantes:** On a point of order, Mr Chairman: I think that even with all the good nature one can bring to bear on the situation, it is truly irrelevant to the motion before us what my character and state of knowledge is. Certainly the question of the age of buildings is irrelevant to the amendment which simply says that we are going to introduce another uncertainty into subsection 13(7). If she wants to defeat subsection 13(7), all she has to do is vote against it. But to change "shall" to "may" does not in-

crease certitude and she is not speaking to it, which is her amendment.

**Mrs Marland:** It must be nice to have a co-chair sitting beside you.

**The Vice-Chair:** Mrs Marland, perhaps if we could proceed with your discussion on the amendment to the amendment and if possible confine our remarks to that.

**Mrs Marland:** It is funny when you say something that is true and you hit the nerve and the minister starts co-chairing the meeting.

To talk about an example of inadequate standard of maintenance is relevant to the age of a building. The application that might be made under subsection 13(7) might be made relative to the age of a building. I am simply saying that this minister said the age of a building was not a relevant factor. It contradicts, fortunately, what her own ministry published, that the older the building the greater the need for repairs and maintenance. Let's just get that on the record.

**Hon Ms Gigantes:** Inaccurate, for the 14th time.

**Mrs Marland:** Well, maybe—

**The Vice-Chair:** We can respond to that later. Mrs Marland has the floor; let her proceed.

**Mrs Marland:** It may be inaccurate. It is, fortunately, recorded in Hansard and printed in a publication put out by the Minister of Housing. It is there if anybody wants to see whether it is fact or fiction.

In dealing with this section the minister would have to agree—or maybe she would like to answer the question. I know the answer to this question but I would like to hear what the minister's answer is because it is relevant to her last answer about decreases and increases. Does the existing legislation permit tenants to apply for a decrease?

**Hon Ms Gigantes:** It does in a section that was never declared. Is that correct?

**The Vice-Chair:** The minister is seeking counsel from Ms Parrish.

1650

**Ms Parrish:** Do you mean the current RRR? Does it have a section that allows you to apply for a decrease?

**Mrs Marland:** The minister does not have the answer, I guess. I am asking about the current legislation.

**Ms Parrish:** There are situations in which you can get a rent decrease where there has been a service withdrawal, for example, where the landlord provided hydro and is no longer providing hydro.

There is the ability to have guideline increases suspended because of inadequate maintenance. The current statute actually does not allow you to go below the actual existing rent unless there has been a service withdrawal. So this statute is different in that respect.

**Mrs Marland:** That is right.

**The Vice-Chair:** Is that helpful, Mrs Marland?

**Mrs Marland:** I knew that was the answer and I wanted to get it on the record from the minister, but obviously the minister did not have the answer.



What I think is significant here is that under the existing legislation we have this backlog of appeals and the minister is saying that under this legislation everything is going to be expedited and we are not going to have that problem. Yet under this legislation, a whole new ball game opens up because under this legislation the tenants now can claim an inadequate standard of maintenance, and it has to be heard. They can claim a reduction in services or a discontinuance in services, and that has to be heard.

The minister says, "There are not a lot of landlords who are bad landlords, and we know who they are and we could read them into the record here." She cannot say both things. If there are not a lot of bad landlords and yet the backlog in rental increase applications is—what is it, Ms Poole? Is it two or three years?

**Ms Poole:** The backlog at this particular time?

**Mrs Marland:** Yes.

**Mr Mammoliti:** Nice conversation going on here.

**Mrs Marland:** Maybe I will ask the minister then. What is the backlog approximately in number of cases? What is the number of years that those applications have been waiting for rent increases?

**The Vice-Chair:** Minister, can you assist?

**Hon Ms Gigantes:** Yes, indeed. We will get the accurate number. The point of estimation does change from the point when this legislation was first introduced.

**Mrs Marland:** That is right.

**Hon Ms Gigantes:** This government has made a mighty effort to work at clearing the backlogs. Bill 51 has been notorious for its backlogs. What does it look like today, as close as we know?

**Ms Parrish:** We will have to get an exact check on the numbers again, but I would say that to my knowledge there is only a backlog in one area of the province now. The entire province's current excess is in the central office, which is the greater Toronto area. In all other areas of the province, there is no backlog at all at the rent review services level. All the applications are current. I believe that in the central office there is a backlog of about 3,000 cases, which includes tenant and landlord applications.

**Hon Ms Gigantes:** It is a little lower than that actually.

**Ms Parrish:** It may be falling now to about 2,500. There has been a real attempt to bring that backlog down. My understanding is that even the backlog in the central area will certainly be cleared in 1992. As a matter of fact, I think the projections are that it will be cleared this summer so that we do not go into the new statute with a significant backlog from cases.

There is some backlog at the Rent Review Hearings Board as it finishes the cases that have come out of hearings at an earlier level, but the backlog has almost disappeared in relation to the existing statute.

**Ms Poole:** Mr Chair, on a point of clarification.

**The Vice-Chair:** There is no such thing. Maybe with the indulgence of all members, Ms Poole, if you can help us it would be appreciated.

**Ms Poole:** There are two backlogs that we are talking about. One is a backlog at rent review and the other is at the hearings board. As of the summer of 1990, I believe the so-called backlog, the number of applications in the system, was somewhere in the vicinity of 7,000 to 8,000. Of that, they estimated that only a couple of thousand would actually be backlog and that the bulk of the rest of them were just normally going through the process.

I think what has become more of a problem in the last while is that because they were backlogged at rent review, this created a backlog at the Rent Review Hearings Board when they were waiting to get the appeals through.

**Hon Ms Gigantes:** No.

**Ms Poole:** That certainly was my understanding.

**Hon Ms Gigantes:** It is the backlog at the hearings board that has created the longest delays.

**Ms Poole:** Yes, Minister. But I would like to clarify that it was the rent review delays which created that.

**Hon Ms Gigantes:** No.

**The Vice-Chair:** What we wanted was some information in response to the question from Mrs Marland in terms of backlog and the numbers. Has that information been provided to your satisfaction, Mrs Marland?

**Mrs Marland:** The number 3,000 is fine. That was what I asked. But I also asked about the amount of time. Is it two years or three years?

**The Vice-Chair:** Minister, do you care to respond?

**Hon Ms Gigantes:** It depends what level you are talking about. If you are talking about clearing right through the total appeals process under Bill 51, we may be looking at a period of around 18 months. That has to do with the fact that there has been big backlog at the hearings board, which we again intend addressing through this legislation. But as it is in another section of this legislation, I suppose this is not the point at which to get into prolonged discussion about it.

**Mrs Marland:** The point I made has been confirmed, though, which is that under the existing legislation, with whatever your existing staff is—maybe you can tell us how many people. You said you are not going to spend much money on hiring rent officers to implement subsection 13(7). Do you know how many of your existing rent review people are going now to be called rent officers? How many are going to be new hires?

**Hon Ms Gigantes:** Mr Chair, the material tabled with the committee, and which is packaged together with the material Ms Marland has exhibited today by waving it in the air, indicates that the projection the ministry staff believe is accurate is that, if anything, we will be using fewer staff in the administration of Bill 121 than we currently use in the administration of Bill 51. That is a figure which is more or less useful, as a matter of fact. In fact we have increased the number of people who have been administering Bill 51 in order to deal with the backlog to which Mrs Marland refers and we have been extremely determined to get that backlog through the system.

We think it is quite unfair to landlords and quite unfair to tenants to have the kind of overlapping of rent review



decisions and rent review appeals, appeals which are going on while a new application is being made and decided. There have been cases which have gone on close to the two-year mark, which really are in a very basic sense unjust to all the parties involved. They have created confusion, they have created some hardship, and it is not the way a system should be operating. Certainly we have made every effort in the measures presented in this bill to try to make a system that is going to be administratively more simple.

The question Mrs Marland has presented us with is whether the rent officer "may" review certain items in determining the eligibility of an application, or "shall"—the legislation as we have presented it before the committee says "shall"—review items (a) (b) (c) of subsection 13(7). I remind Mrs Marland that they deal with specific items, standard of maintenance or repair, the discontinuance or reduction in services and/or an extraordinary decrease in operating costs.

What we have suggested and what we would like to see is legislation which says the rent officer "shall" consider these as the important matters to determine whether a landlord is eligible for an above-guideline increase, eligible to make an application which will move forward. What Mrs Marland and the Conservative amendment suggests is that we should enter another element of discretion into this matter and substitute for the word "shall" the word "may." I put it to Mrs Marland that if what she was looking for is more certainty in the legislation, the amendment which she is alleging to speak to does not increase certainty, it increases uncertainty.

1700

**Mrs Marland:** The amendment before us refers to rent officers and the mandate they will be given with this legislation. I have asked the minister to tell us if it is going to be up to the rent officers to develop the standards or the benchmark against which the inadequate standard of maintenance would be measured. I wonder if the minister might choose to answer that question.

**Hon Ms Gigantes:** The rent officers are mandated under this section of the legislation, if it passes, to make a determination about the eligibility of a given application. In each case the rent officer will consider standards of maintenance or repair, discontinuance or reduction of service and extraordinary decreases in operating costs to decide whether the application shall proceed.

If benchmarks get built up over those decisions, what can I say? It is quite possible that there will be benchmarks built up. However, I do not think it is possible for any one of us to determine in advance of a rent review officer looking at a particular case what that is going to mean, and that is what this discussion is all about.

However, I am going to put it to you again, Mr Chair, that while Mrs Marland suggests she does not like discretion around these matters left with the rent officer, her amendment is contrary to her intent to produce certitude. Her amendment substitutes "may" for "shall" and does not increase certitude.

**Mrs Marland:** That is the minister's opinion. I think what we are hearing very clearly is that, to use the

minister's own words now, if the benchmarks get built up, then we will have something to measure applications against.

What we are really saying is that it is wide open and I feel sorry for the first person into the lion's den with his or her application, either a tenant or a property owner, because there are no guidelines for either side. There is no guideline for that tenant as to what inadequate standard of maintenance is, there is no guideline for the property owner, and sure as heck, apparently, there is no guideline for the rent officer.

So what are we going to do here? We are going to pay the rent officers a nice sum of money for their jobs and we are going to say: "Go out and develop your own guidelines to interpret this bill. We are not willing to give you any examples. Why would we? We wouldn't give them to the committee that was passing the legislation. So this is your new job now, Mr Rent Officer. You go out and whether you 'shall' or you 'may,' this is what the description of your job is: You're to hear applications and sit in judgement in a decision that will deteriorate the living environment of those tenants in those rental buildings."

We have no answer from the minister about what is an example except one, which is a work order dealing with health and safety. This minister will not give examples. She hides behind these words. She will not give an example of an inadequate standard of maintenance or repair. Perhaps the minister might like to give us—

**Mr Winninger:** Mr Chairman, on a point of personal privilege.

**Mrs Marland:** Good, you are awake.

**Mr Winninger:** This is cruel and unusual punishment and I am asking the Chair to make a ruling under the Charter of Rights which prohibits cruel and unusual punishment.

**The Vice-Chair:** I am not aware that is in fact a point of privilege.

**Mr Winninger:** You are a lawyer. I think you are well qualified.

**The Vice-Chair:** In any event, I would not presume to be learned in the law sufficiently to make such a significant judgement. Perhaps we can allow Mrs Marland to continue.

**Mr Mammoliti:** On a point of information: I bet you everybody is glad the interjection took place, however. Things were getting kind of boring and I am glad he did it.

**The Vice-Chair:** I am not sure that is helpful, but thank you.

**Ms Poole:** Mr Chair, on Mr Winninger's point of personal privilege.

**The Vice-Chair:** There is no discussion on a point of personal privilege. It was not a point of personal privilege.

**Ms Poole:** Then, on his point of order: He does not realize that members have no privileges.

**The Vice-Chair:** Mrs Marland, if you could continue, please.

**Mrs Marland:** It is interesting that Mr Mammoliti says it is boring. It certainly is an indication of his concentration



span. He has hardly been here all afternoon, and for the short time he is here he then says it is boring. It will be very boring for his tenants and his property owners if that is the description of what is going on in this legislation.

**The Vice-Chair:** Mrs Marland, one moment, please. First of all, whether a member is here or not here is inappropriate and you are well aware of that, as am I. I ask you to return, please, to the matter before us, your amendment.

**Mrs Marland:** I would be happy to. This minister chooses not to give an example of inadequate standards of maintenance. Could I ask her to give an example of clause (b), "a discontinuance or reduction in the services or facilities provided in respect of the residential complex or a rental unit in it."

**Hon Ms Gigantes:** In answering Mrs Marland's question, I would like to draw to her attention that in spite of her vigorous claims to the contrary, I have indeed presented other examples of inadequate maintenance. It may have been that Mrs Marland was not listening, but I am sure she will check Hansard just to make sure she is not making a mistake when she says I did not present examples.

In terms of the examples she has asked for of a discontinuance or reduction in services, we have had, unfortunately, throughout this province numerous examples. Again, I say numerous examples because there are a fair number of landlords involved and certainly the lives of thousands of tenants have been affected. But given the number of landlords overall in this province, a relatively small proportion of landlords commit these indiscretions and grievances against their tenants.

There have been lots of examples of landlords who have permitted bills to go unpaid and heating or lighting to be shut off. There are examples of landlords who have simply not provided for basic services which tenants had every reason to believe, and under law had the right to believe, should be in place. In fact, the existing legislation provides for remedies under such circumstances.

Mrs Marland will undoubtedly be aware that many municipalities and many hydros have had to take special measures to ensure that tenants caught in these situations—and often, when there is one landlord involved, the landlord is a repeater when it comes to these offences. We all know at our constituency offices and at the municipal offices and at the hydro offices and at the gas company offices, landlords who have repeatedly failed to provide services which tenants either legally had a right to or in fact contractually had a right to within their leases.

**The Vice-Chair:** Thank you, Minister. Mrs Marland.

1710

**Mrs Marland:** Hansard is going to prove very interesting reading because on the one hand the minister says it is a fair number of landlords and then she says it is a relatively small number of landlords. Here we are using this elephant gun in Bill 121 to get at something for which she gives the example that is already addressed in legislation.

Landlords are not allowed, under existing legislation, to not maintain a certain temperature within certain months of the year for rental accommodations. If we are talking about heating—oil, gas, electricity—being cut off,

if we are talking about any reduction in that area, that is protected under existing legislation. I thought perhaps an example the minister was going to give of a reduction in services would not be something that would be illegal today under a contract to rent. Today, when you sign your rental agreement, the conditions in there give provision for something as basic as water supply and the temperature of the heating and, of course, electricity, if, in fact, they are paying for electricity. Those things are presently protected under the existing contract. So I guess there is not an example under clause 13(7)(b) then, other than those three areas you have given.

**Hon Ms Gigantes:** The proposal, legislatively, is not merely one of repeating existing legislative coverage. I put it to you, Mr Chair, that the examples we in this room all know about, that tenants have been asked to suffer under the existing legislation, indicate quite clearly that the existing legislation is not effective when it comes to ensuring that tenants' rights to service are being met. It is precisely for that reason that this section of the legislation provides that an application by the landlord for an increase in the rent above guideline shall be reviewed by the rent officer.

If there are clear indications—and usually these are quite clear; usually it is not the case, in my experience, and I would suspect in the experience of others, that a landlord has let the heat go off on tenants, and it is a one-time event. What we usually find—as I say, I do not think there is anybody in this room who has not noted this—is that there is a relatively small number of landlords, when you compare them, Mrs Marland, to the total number of landlords, but they are a rather large number of landlords when you think about the number of tenants' lives which are put in aggravation, if not some real discomfort and problem related to health. These landlords tend to be repeaters.

The current legislation does not seem to have been effective. We are proposing measures in section 13 which, along with others in this bill, we hope will prove effective by means of directly addressing the level of the landlord's rent. We want to get as close to the self-interest of the landlord as we can with that small number of landlords who have created this large number of problems under existing legislation and previous legislation. We want to get as close to their self-interest as we can, and that has to do with the level of their rents. We want the rent officer to have the discretion to note and to make a determination about the eligibility of the application for above-guideline increase on the basis of such a problem with services.

**The Chair:** Thank you, Minister. Mrs Marland.

**Mrs Marland:** Mr Chairman, the minister keeps referring to the application for the above-guideline increase, but this section also pertains to the possibility of having the maximum rent reduced.

**Hon Ms Gigantes:** Oh, yes.

**Mrs Marland:** Obviously there is not anyone who condones a landlord not fulfilling his contract to his tenant. We are not talking here in my questions about a bad landlord who does not either heat the water or provide the level of heating to the unit that is agreed to in the rental agreement document. That is not what I am asking about. I do



not condone landlords who do not meet their legal commitment under their lease with their tenants. That is common sense. What we are talking about here is the possibility of a landlord applying legally for a rent increase and having the decision made by the rent officer as to his eligibility or a tenant asking for a rent decrease because of these three conditions.

Obviously, under the existing lease—and I am not a lawyer, but I have a little common sense and I think if you have a lease that entitles you to have an apartment that provides you with heat, light and water and that contract is violated because you do not have one or any or all of those components being met in your lease in your apartment, then you in fact, as I understand, can even withhold rent. If you were taken to court by the landlord, which would be his option, then you would have the option of going before a judge who, if there was evidence that your apartment was cold or if it was an air-conditioned apartment in the summer where you were guaranteed a certain temperature and it was not met, obviously these are not the cases we are talking about. The tenant in that case would, I am sure, with the evidence before a judge, be able to win the case. The interesting thing in that case, of course, would be that it would be the landlord who would be taking the tenants to court because they had not paid their rent because their contract had been violated by the landlord's operation of the building.

That is not what we are talking about here. We are talking about a case where a landlord can face the risk of a reduction in rent for any one of these three areas. I am wondering, for example, if the minister could answer the question about where it says "reduction of services." If there happened to be four elevators in a building that you rent your apartment in and, for reasons beyond the control of the landlord, the one elevator is out of commission for a week or two—maybe they were waiting for parts to come from overseas. I have had an example of that in my riding with a foreign-made elevator. It was a huge part that could not even be flown over, it had to be shipped over. That elevator was out of commission for three months, so the building was reduced from four elevators to three. In that kind of example, Minister, would you consider it a discontinuance or reduction in service that tenants who rented in a building with four elevators and for three months had three? Is that an example?

1720

**Hon Ms Gigantes:** I hesitate to become a rent officer for Mrs Marland, but I would say no, as long as the landlord was making the best effort to make sure the elevator got back in working operation. It seems reasonable to me.

**The Vice-Chair:** Mrs Marland, is that sufficient explanation?

**Mrs Marland:** I appreciate the answer from the minister.

With regard to the example the minister gave about gas or hydro being shut off, apparently that is not possible in Toronto. If it was because of arrears in a bill, the city would pay the bill and put it on the tax bill. Apparently there are cases where that has happened. In Mississauga

very recently Mayor McCallion gave me an example where she had been phoned on a Friday night because a building was going to have its gas turned off. She had to go to the gas company on behalf of the tenants and ask that—in fact, I think the gas had been turned off. She went and appealed and it was turned back on. I guess in that case the city of Mississauga said to the gas company that it would add it to the tax bill as well. I am sure there are other examples of that.

If you are giving examples of where the tenants are at risk, Minister, we should be sure of where that could actually happen. It does not happen in Toronto and obviously there has been a remedy for it in Mississauga as well. The greatest number of rental housing units are in the greater Toronto area. I thought earlier, when Ms Parrish was talking about where the backlog in the hearings was—that is, in the central office, the greater Toronto area—that would make sense, because that is where the largest number of rental units are in the province.

Anyway, I see we have come to an agreement that if we were to vote on these two votes, we could adjourn.

**The Vice-Chair:** Mrs Marland, what I wanted to—

**Mrs Marland:** May I just say, being the Thursday before Christmas, that is a tough call, because I too would like to adjourn and would agree to adjourn, but I have a great deal of concern about this amendment by the government. I guess if we are going to vote on the amendment and my amendment, then I would still have an opportunity, when we get to the amended motion, to speak further on this matter at the next meeting. Is that correct?

**The Vice-Chair:** Mrs Marland, I think the understanding is that we will vote on your amendment and the amendment at this time. Failing that, I think it is appropriate that we continue discussion.

**Ms Poole:** On a point of information, Mr Chairman: We still have to deal with section 24 later in the bill, which directly deals with inadequate maintenance. In fact, that is what this amendment, subsection 13(7) in the bill, originally referred to, section 24. This amendment was an attempt to clarify section 24, so there will be another opportunity to continue this debate.

**The Vice-Chair:** On this subject matter the minister has a point of order and I recognize the minister for her point of order.

**Hon Ms Gigantes:** My understanding was that people on the committee were agreeable to finish with subsection 13(7) and to vote on amended 13(7) and finish with 13(7), not that we would vote on an subamendment and then vote on an amendment and hold off a vote on the amended 13(7). In other words, I think the understanding did not contemplate that we would have three votes, two of which would be taken today and a third which would be taken at the time of our next meeting.

**The Vice-Chair:** Thank you, Minister. My understanding is, and in any event my ruling will be, that we will deal with the amendment to the amendment and the amendment, as is appropriate and as is consistent with procedure. We will either deal with both of them or the discussion will continue until such time as we are authorized



to continue. I also want to remind the committee that there is the necessity to deal with a report of the subcommittee. I am sorry, I am wrong. The clerk informs me that the subcommittee has been dealt with. I was advised otherwise. I apologize for that.

**Hon Ms Gigantes:** On a point of order, Mr Chair: I do not know if I expressed myself clearly. There is a potential of three votes dealing with subsection 13(7). My understanding of the understanding that we came to here was that we would deal with all three today, not that we would leave one hanging out for a further vote on a different day.

**The Vice-Chair:** In which case, if we are going to discuss what kind of arrangements are being made, I am going to ask for a five-minute recess so that the three parties can determine what arrangements they have agreed on. Failing that, we will return promptly—I emphasize promptly—in five minutes, at which time discussion will continue until the time we are charged with that responsibility. We stand recessed for five minutes only.

The committee recessed at 1727.

1739

**The Vice-Chair:** I understand that we have agreed we will proceed with the vote. We have a motion on the floor for a Progressive Conservative amendment to subsection 13(7). Shall that amendment to the amendment carry? All in favour? All opposed?

Motion negatived.

**The Vice-Chair:** With respect to the amendment to subsection 13(7) as moved by Ms Gigantes, I believe.

**Hon Ms Gigantes:** With thanks to the Liberals.

**The Vice-Chair:** Shall that motion carry? All in favour? All opposed?

Motion agreed to.

**The Vice-Chair:** On subsection 13(7) itself, I will be asking for that to be voted on. It has been put to us by way of motion. Shall the motion to adopt subsection 13(7), as amended, carry? All in favour? All opposed? That is therefore carried.

Thank you all for your assistance and co-operation.

I would at this moment like to inform members of the committee that the Chair has received a matter for consideration pursuant to standing order 123 from Ms Poole. That is for your information and will be dealt with in due course.

There being no further business for the present time, I declare the committee meeting for today adjourned.

**Mrs Marland:** Before we adjourn, I would like to use the opportunity to wish the minister and the staff of the Ministry of Housing and the members of the committee and the clerk and Hansard a very happy holiday and healthy new year.

**The Vice-Chair:** Thank you, Mrs Marland.

**Ms Poole:** I too would like to join in best wishes for the season and to say I hope that none of the harsh words that have been spoken in committee are taken too much to heart. We are all just doing our job. I hope people come back refreshed after our midnight sittings and our late adjournments next week and everything else. You have a very happy Christmas season and prosperous new year.

**Hon Ms Gigantes:** I would like to, on behalf of our members of committee, express thanks and best wishes of the season to members of the committee, but I am sure we will all be back here next week.

**The Vice-Chair:** We very well may be, but having said that, may I say Merry Christmas to all and for the time being, to all a good night.

The committee adjourned at 1742.



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## Legislative Assembly of Ontario

First Intercession, 35th Parliament

## Official Report of Debates (Hansard)

Monday 13 January 1992

### Standing committee on general government

Rent Control Act, 1991

## Assemblée législative de l'Ontario

Première intersession, 35<sup>e</sup> législature

## Journal des débats (Hansard)

Le lundi 13 janvier 1992

### Comité permanent des affaires gouvernementales

Loi de 1991 sur le contrôle  
des loyers



Chair: Michael A. Brown  
Clerk: Deborah Deller

Président : Michael A. Brown  
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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON GENERAL GOVERNMENT

Monday 13 January 1992

The committee met at 1415 in room 151.

### RENT CONTROL ACT, 1991

#### LOI DE 1991 SUR LE CONTRÔLE DES LOYERS

Resuming consideration of Bill 121, An Act to revise the Law related to Residential Rent Regulation / Projet de loi 121, Loi révisant les lois relatives à la réglementation des loyers d'habitation.

#### Section 13:

**The Chair:** The standing committee on general government will come to order. The business of the committee is to do the clause-by-clause review of Bill 121. We will commence our discussions today with subsection 13(8) as printed. The parliamentary assistant has an explanation for the government amendment.

**Ms Harrington:** Subsection 13(8) sets out the requirement for a landlord to file information for rent registry purposes prior to an above-guideline increase order being issued, even if the prescribed filing date for that complex has not passed. In other words, the complex must be registered in order for them to apply for an above-guideline increase.

**The Chair:** Are there questions, comments or further amendments to subsection 13(8)?

**Ms Poole:** Just a question of clarification: Could the parliamentary assistant tell us why this particular amendment is necessary?

**Ms Harrington:** I think it is just a clarification, to make sure it is clear that you have to be registered.

**Ms Parrish:** I think too it is partly to avoid a sort of duplication of proceeding. The process we have taken in the past is that if you make an application and you are not registered, then as part of the application, we will order you to register, because to determine the rent we have to do the space rent validation and then we have to register. All the big landlords, frankly, know that. It tends to be the smaller landlords who make an application and then find out that they have to do this additional thing. We just felt it was more efficient and more up front to tell people that this is how it works. Then people will know that if they want to apply for an above-guideline increase, they have to register their rents at the same time or in advance of the determination.

**The Chair:** Are there further questions or comments on subsection 13(8)? If not, is it the pleasure of the committee that subsection 13(8) carry? Carried.

Section 13, as amended, agreed to.

#### Section 14:

**Ms Harrington:** A landlord's jurisdiction to base an application on extraordinary operating cost increases is provided by subsection 14(1). The operating cost categories

are set out. They are the following: municipal taxes, hydro, water and heating. Costs are to relate to the whole residential complex.

**The Chair:** I see there is a Liberal amendment and also a Conservative amendment to section 14. We will deal with the Liberal amendment first.

Ms Poole moves that section 14 of the bill, as reprinted to show the amendments proposed by the minister, be struck out and the following substituted:

"14(1) The landlord may base an application on an extraordinary increase in operating costs for municipal taxes; hydro; water; heating; a land lease from a government, a government agency or a financial institution, or any other prescribed operating cost category for the whole residential complex.

"(2) An increase in operating costs for the operating cost category is extraordinary if the increase, expressed as a percentage, is at least 50% more than the percentage set out in the corresponding operating cost category recognized in the table referred to in subsection 12(1) for that category."

I am just wondering out loud here, Ms Poole, would it be better for us to deal with just your amendment to subsection 14(1)? I notice the government has an amendment to subsection 14(2) and the Conservative amendments relate to subsections 1 and 2 separately.

**Ms Poole:** That is certainly agreeable with us.

**The Chair:** Is it agreeable to the committee to deal with them in that fashion?

**Mrs Marland:** You are going to deal with all the amendments to subsection 14(1)?

**The Chair:** We will deal with all the amendments to subsection 14(1) and then we will move to all the amendments to subsection 14(2). Ms Poole, do you have an explanation?

**Ms Poole:** I probably do.

**The Chair:** I thought you might.

**Ms Poole:** It is very difficult after three weeks to get one's mind back in gear as to what we are doing in clause-by-clause, but I shall try my best. The major differentiation—actually, there are two—as to what the government has proposed in the legislation is that we have added one category where there may be an extraordinary increase in operating costs of a land lease from a government, a government agency or from a financial institution.

In itself this may not seem like a fairly major problem, but there have been estimates that many land lease programs that were set up, say, 20 or 25 years ago are now becoming eligible for renewal. At the time the land was leased, the price for land of course was quite reasonable. We are talking about land where an apartment building is situated.



This engenders a problem for landlords. If they do not have an outlet to have an extraordinary operating increase, then they may be forced to pay land lease costs that might be 10 or 20 times as much as what they were paying 30 years ago, and yet there would be no recourse to change the rents. In many cases, rents in these buildings are very reasonable because the leases are very low. There would be no recourse to make sure the landlord is able to recover those costs and keep solvent. This is a problem that we felt could be dealt with very simply. I do not think there are very many situations, but there are a few and this would solve it.

The second change from the government's is that we have put "or any other prescribed operating cost category for the whole residential complex." "Prescribed" refers to the fact that the regulations can set another one if the government wished to change things.

Changing legislation now, is much more difficult than changing regulations. This would give the government some flexibility in that if there were a cost category at some future date that it felt should be prescribed as extraordinary operating, it could do this by regulation without having to come back and open up the legislation.

We feel that rather than specifying certain things in the extraordinary operating cost category, such as the Conservatives have done in their amendment to subsection 14(1) in the extraordinary operating costs category, it might be more palatable for the government if we just gave it the discretion to open up new categories as the need arises.

**The Chair:** Do you wish to respond, Mrs Harrington? Mr Turnbull is also on the list.

**Ms Harrington:** It is up to you, Mr Chair, how you would like to deal with it.

**The Chair:** Go ahead.

**Ms Harrington:** I would first like to say that land leases are considered to be a form of financing. The intent of the government is that any form of financing the building is not a pass-through. That is the first part of your amendment. That is why we are not agreeing to that. The basic philosophy of the government is that financing the buying of a building is not something that is going to be passed through to the tenants.

I was thinking about, and speaking with my assistant here, with regard to your second consideration on an operating cost category. If things changed in the future, dealing with it through regulation is certainly an easier way than opening up the bill. I will discuss that with the minister, but at this point in time, no.

**Ms Poole:** I would just like to respond, if that is in order. I am trying to make some sense out of the government's response in this regard. First of all, on their philosophy that there should be no financing of buildings passed through to the tenants, surely the parliamentary assistant must agree that this is an extraordinary situation. As I mentioned, there are not a lot of them in the province, but it is not an ordinary financing situation where you have a mortgage that is renewed in one year, two years or five years.

We are looking at situations that have changed over an extended period of time and might incur real hardship. The government's response to that might be, "Well, as long as it's the landlord having the hardship, we don't really care." But I will tell you, in these very hazardous economic times, if you are going to create a situation where a landlord is going to go insolvent because he or she simply cannot afford to pay these significant costs, I think that is irresponsible.

As for the second item about whether the government might be willing to accept this section where we have proposed that the prescribed operating costs category for the whole residential complex be enabled through regulations, if the parliamentary assistant feels there is a possibility the minister may be considering this, then we would certainly ask to stand down this particular amendment until such time as we find out the minister's response on it.

**Ms Harrington:** That might be the simplest thing to do. I understand your point that this land lease is an extraordinary thing in occurring every 25 years, but our position is clear with regard to the financing costs of buildings. I wonder if Colleen wants to comment on that particular aspect of it.

**The Chair:** I thought I heard a second ago that we were agreeing to stand this down. If we are going to stand it down, maybe we should do that now and come back to the whole issue. Rather than explaining it now and then standing it down, I think it would be—

**Mr Turnbull:** Can I just add a couple of comments before you stand it down, just as background, if you want to think about this?

**The Chair:** Yes, I think that would be fine, Mr Turnbull. You have been most patient.

**Mr Turnbull:** This is a very important aspect of landlord costs Ms Poole has brought forward. There are several large buildings actually on TTC rights of way, and most of the land leases on those buildings will be coming up within the next three or four years.

When you view it as simply a financing cost, you are talking about a variable of an interest rate. Let us take an extreme case, not taking the low interest rates we have today. Let us say you had a 9% interest rate and interest rates were going up to 15%. That obviously would be a terrible hardship on the landlord, but not of the order of magnitude of having a land lease.

Typically, how you arrive at a land lease, for the benefit of the parliamentary assistant, is that you will assign a value to the land at the time you renegotiate the lease and then you will take a certain percentage of that. I am just going to pull figures out of the air.

Let's say you use 8% of the value of the lease. If you have 8% of a piece of land which today would be valued at \$5 million, as compared with when the lease was started 25 years ago, 8% of perhaps \$750,000—that is the kind of order of magnitude—you can tell you have an absolutely enormous increase in your costs, with no ability to pass that through. It is just the very nature of land leases that they work like this.



The tenants in a building which would be 25 years old—and typically the kind of buildings we are talking about will be buildings which have been in rent review since the very beginning, because normally a land lease will come up, say, every 25 years for renegotiation—those buildings will have already had the benefit of the lower cost, inasmuch as rents were reflective of the lower costs to the landlord.

In other words, you would not build a building and have rents which were quite as high as one where you owned the land fee simple. There has already been that benefit to the tenants, because the landlord has not been going back and getting refinancing increases during that period of time, so it is a onetime cost which is not incurred with other buildings.

I think it is tremendously erroneous to start trying to put it within the matrix of financing costs because it is a very different type of animal. It undoubtedly could lead to bankruptcy of some landlords.

**The Chair:** Thank you. I take it we are to continue this discussion even though there has been an offer to stand it down by the government.

1430

**Mr Mammoliti:** I am somewhat compelled to tell you of a little story, a little background, of a place in my riding I am not too pleased about. The case I would like to refer to in reference to what we are speaking about is a case where a landlord owns a piece of property and he leases it out to his own company, leases it out to his own property management firm as well. The reason I am not too pleased about it is that the tenants who live in the Antica Village apartments in my riding have been literally screwed, royally ripped off, because the landlord—

**Mrs Marland:** On a point of order, Mr Chair: Do you think you could direct Mr Mammoliti to use parliamentary language? Thank you.

**The Chair:** I am sure Mr Mammoliti will carefully consider his comments.

**Mr Mammoliti:** I want to thank Mrs Marland for her concern, but I would like to continue. She has the habit of interrupting and I am not too pleased about that. I have shown you that in the past.

**The Chair:** Just continue speaking to subsection 14(1).

**Mr Mammoliti:** As I said, they have been continually screwed, ripped off, and I am not—

**Mrs Marland:** I object to this kind of language.

**The Chair:** Mr Mammoliti, could you more carefully consider your usage of the English language?

**Mr Mammoliti:** The language is a little firm, a little strong, but in this case there is reason for it. I would appreciate Mrs Marland waiting until I am finished and maybe she would agree that in this particular case the language has to be this strong for people to understand why I feel so strongly about this.

The landlords a few years ago decided to up the amount they were charging their own company for this

land. Ultimately, because they did that, the tenants now have to pay up to 55% of an increase.

**Ms Poole:** On a point of order, Mr Chair: I am afraid Mr Mammoliti's story, while interesting, is quite irrelevant to this discussion because we are talking about a land lease from a government, a government agency or a financial institution. We are not talking about private sector land leases. So, like I say, while the story is of course of some interest, it is quite irrelevant to the amendment.

**Mr Mammoliti:** It is relevant, and if people would let me finish, they could see the relevance.

**The Chair:** I think Ms Poole was just trying to help you define what subsection 14(1) is about.

**Mr Mammoliti:** I understand it. The reason I have to agree with the government's decision on this is that I do not condone tenants being ripped off this way. In the particular case I am talking about—

**Mrs Marland:** I have a point of order, Mr Chairman.

**Mr Mammoliti:** Here we go again.

**Mrs Marland:** It has been brought to the attention of the member that he is not speaking to the matter which is before the committee, and I think, with respect, he should be called to order.

**Mr Mammoliti:** Let me finish.

**Mrs Marland:** He is not speaking about land leases in the categories that are addressed by this amendment and I do not think he should be allowed to continue when he is dealing with a subject that comes under another matter.

**Mr B. Ward:** On a point of order, Mr Chair.

**The Chair:** On the same point of order, Mr Ward.

**Mr B. Ward:** I think what Mr Mammoliti is suggesting is that this is a scenario that could occur under some of these options that are listed. I would like to hear his finished discussion on this issue.

**The Chair:** On the same point of order, Ms Poole.

**Ms Poole:** On the same point of order, Mr Chair: I would question Mr Mammoliti. Are you suggesting that the government or a government agency would institute this type of action where it would—not to use your first word, but perhaps your second one—rip off the tenants?

**Mr Abel:** That is a question, not a point of order.

**The Chair:** No, it is not a point of order, but I think the information that has been brought forward is correct, although, as all members will recognize, the Chair has allowed a great deal of latitude when discussing clause-by-clause consideration of this bill. I would ask Mr Mammoliti to continue but to incorporate section 14(1) in his comments.

**Mr Mammoliti:** Thank you, Mr Chair. First of all, let me wish everybody a happy new year. I think I should have started with that.

The Antica Village apartments that I am using as an example is an example I am not too pleased about. More commonly known as the Sorbara apartments, they are a prime example of what could happen if we do not put our foot down. Yes, in answering Ms Poole's question, we have to control ourselves. If we allow ourselves to do that



to tenants—and I am not saying we would or any government would or has; I am saying we have to control the future. We have to control what may happen and we have to read signs. We have to read the potential. The Antica Village/Sorbara apartments are a prime example of how tenants can be ripped off. The Sorbara apartments have increased the rent of the tenants to 55% because of this lease. We have to control that.

**Ms Poole:** On a point of order, Mr Chair: Mr Mammoliti seems to want to politicize this. Just as I have—

**The Chair:** What is the point of order?

**Ms Poole:** The point of order is that when Mr Mammoliti made his comments, many members of this august committee could have pointed out that Ms Akande ripped off her tenants, but we do not do that.

**The Chair:** That is not a point of order.

**Ms Poole:** And I think he is going outside the bounds by trying to make inferences that are not correct.

**The Chair:** Mr Mammoliti has the floor.

**Mr Mammoliti:** The people that sit across from the Chairman are wicked people. They do not want to listen to reason. They do not want to listen to argument. They do not want to listen to my opinion, Mr Chairman.

**The Chair:** Order, Mr Mammoliti. We will continue our discussion of the Liberal amendment to section 14(1) and, if we can, let us try to keep our discussion as close as possible to that amendment.

**Mr Mammoliti:** I will just close by saying I agree wholeheartedly with the government's amendment. I agree that we have to maintain; I agree that we have to control, and I do not think the government would do that to tenants. I am hoping the government would never do that to tenants. Tenants want to be protected and, if we are not going to protect them, who will? If the private sector is doing this to tenants, it has to stop as well. I assure you that is something I would like done as well.

**The Chair:** Mrs Marland has some comments on a section we are trying to stand down.

**Mrs Marland:** Actually, Mr Chairman, I do not have any comments on the section we are going to stand down, but I do have a question on procedure. I am very happy to have the parliamentary assistant in the minister's chair this afternoon because I personally find Ms Harrington very reasonable and easy to deal with. I do, however, wonder if the Chair or the clerk or the parliamentary assistant can advise the committee where the minister is this afternoon, and also when she will be attending these committee hearings this week.

**Ms Harrington:** I will be pleased to do that. This afternoon she is at policy and priorities board of cabinet. I believe her intention is to be here every single day she can be here. In other words, she should be back tomorrow.

1440

**Mrs Marland:** I appreciate the answer. Thank you.

**Ms Poole:** On that point, may I say on behalf of the Liberal caucus that we are delighted that as charming and

fairminded a person as Ms Harrington is with us in this position today.

**The Chair:** The Chair still has a problem. Are we to stand down the consideration of subsection 14(1) or are we to continue the discussion?

**Ms Harrington:** If it is the wish of the committee to proceed with it, I have no problem. If you wish to proceed with it, as we have had the discussion—

**The Chair:** I think we have had the discussion, or at least a partial discussion.

**Ms Poole:** The reason I suggested we stand it down and the parliamentary assistant agreed was the fact that she mentioned she would bring this matter up with the minister as far as the second part of it is concerned, the part that refers to prescribing extraordinary operating costs categories and empowering the government to have that ability. I thought from the parliamentary assistant's comments, if she was going to be discussing it with the minister, the minister may be reconsidering that we should give that opportunity.

**Ms Harrington:** We have had the discussion on the first part of this, which is the land lease idea. The second part of it is the part I was concerned about, whether the government would find it easier or more expeditious to have it in the form of regulations or whether we want to have this more closed in the legislation. At this point we could stand it down and proceed as quickly as possible to the next section.

**The Chair:** Do I have unanimous consent to stand down subsection 14(1)? Agreed. Thank you. I am advised by legal counsel that we cannot finish the consideration of section 14 until we have dealt with subsection 14(1).

Interjections.

Section 16:

**The Chair:** We are on section 16, after a little bit of discussion about the proper procedure here.

**Ms Harrington:** Subsection 16(1) allows a landlord to base an above-guideline increase application on capital expenditures incurred if the work was completed between January 1, 1990, and June 6, 1991. The expenditure could not have been claimed in an application under section 71 of the RRRA unless it was claimed during the period in which no relief was available under that legislation for capital expenditures. In other words, this is the transition period and we are allowing landlords to claim above the guideline for their expenditures made, at a cap of 3% above the guideline.

**The Chair:** I see we again have both Liberal and Conservative amendments to subsection 16(1).

**Ms Poole:** Ms Poole moves that subsection 16(1) of the bill, as reprinted to show the amendments proposed by the minister, be amended by striking out "1st day of January, 1990" in the fifth and sixth lines and substituting "the 1st day of September, 1989."

Do you have an explanation?

**Ms Poole:** I probably do, Mr Chair. This section deals with the transition period which was affected by Bill 4, the rent freeze the government brought in and introduced in



the fall of 1990. There are not very many cases where the work was completed between September 1 and January 1, 1990. Most of the work was completed after the first day of January 1990.

However, we felt that to be truly accurate and restore at least a small measure of fairness, all cases where the landlords were caught under Bill 4 should be considered and it should not be restricted to only those that occurred from the first day of January 1990. There are not, as I mentioned, a lot of cases, but certainly it is reasonable that these cases should be given consideration.

**Ms Harrington:** Briefly, the government considers that it was most fair in going back to that date of January, that indeed, as you mentioned, most of the cases have been covered and it is our intention to remain with that date.

**Ms Poole:** Just to continue on that point, when the parliamentary assistant says it is most fair that the government has chosen this particular date, perhaps we should point out that there is very little fairness in what you have done. You retroactively went back in time and changed the law from what the law in the land had been for people who had done work in expectation that they would be covered and that they would get full cost recovery. Now you have in your graciousness allowed a very small proportion of that recovery to be made and at the same time limited it to the first day of January 1990.

It just does not seem to me that there is any fairness or merit in this situation. If you are going to try to be at least a bit fair, at the very minimum the government should cover all the cases. When we get to the section on the cap, that will be another debate, but certainly I cannot see why, as it affects so few cases and is just a matter of bringing fairness to the legislation, the government would object to it.

**Mrs Marland:** Obviously, with our amendment being only one month different from the Liberal one, our intent and concerns are the same, because of the tremendous hardship that has been brought on the property owners who were given awards based on the existing statute. Now we have an even better, I suppose, for lack of a stronger word—a situation where Bill 4, being the statute that was in existence at the time, has been challenged successfully in court. I am referring to the Moretta case, I think it is, in St Catharines. When an independent court decision, which obviously has no partisan political games to play—

1450

**Mr Mammoliti:** On a point of order, Mr Chairman: The Moretta case in St Catharines deals with Bill 4. We are on Bill 121.

**The Chair:** Thank you for the information.

**Ms Poole:** Mr Chairman, on that point of order.

**The Chair:** It was not a point of order.

**Ms Poole:** Whatever point Mr Mammoliti was making, I would like to make the same point.

**The Chair:** I think Mrs Marland has the floor. You will have your opportunity after Mrs Marland.

**Mr Mammoliti:** Can you rule on mine?

**The Chair:** It was not a point of order; it was a point of information.

**Ms Poole:** On a new point of order, Mr Chair: This particular section relates directly to Bill 4 and trying to repair the devastating impact of Bill 4, so it is very much in order that the Moretta case be discussed.

**The Chair:** Thank you, Ms Poole. Mrs Marland, you have the floor. You may continue.

**Mrs Marland:** The member for Yorkview may not fully understand the relationship between Bill 4 and Bill 121, although he has been a member on this committee much longer than I have. My understanding is that I am in order discussing them, because there is a relationship between Bill 4 and Bill 121.

If the parliamentary assistant would like to clarify it, I would appreciate it, because it is my understanding that when this socialist government came into office, it decided that the existing statute, namely Bill 51, was not the approach to rent controls it wanted to have. So in a whisk of frenzy they passed Bill 4. At the time it was being dealt with in the House Bill 4 was described as an interim measure. It was in fact to be in place for two years. During that two years the government proposed to come forward with another piece of legislation, which is the legislation currently before this committee today, Bill 121. Bill 121 was to address the concerns and problems Bill 4 had brought, and hopefully Bill 121 was to provide the remedies for those people who were so badly caught with the implementation of Bill 4.

It is very important to talk about both pieces of legislation. I would ask Ms Harrington, through you, Mr Chairman, whether what I have said is correct about the relationship of those two bills and the purpose of Bill 4.

**The Chair:** Thank you, Mrs Marland.

**Ms Harrington:** Did you want an answer just to that question or would you like a little clarification about the judge's ruling?

**Mrs Marland:** No, I am very clear on the judge's ruling in the Moretta case in St Catharines. The judge's ruling—I have a copy of it here—identifies very clearly what the powers of the government are under Bill 4. The interesting thing is that the Moretta case—I gather Mr Moretta owns four St Catharines rental buildings—this decision, I think, was handed down just two or three days before Christmas; I think it was December 23. But it is a very significant ruling while we are looking at Bill 121, because in the case of Mr Moretta, he was given rent increases in a phased-in program in subsequent years. He was in the midst of his approved phased-in rent increases when Bill 4 came in.

What happened to him, I understand, is that in the midst of his already approved rent increases, which obviously were legal—they had gone through the examination of their legality and their eligibility and they stood, so therefore his rent increases were awarded—in the midst of this, Bill 4 came in and took away the ongoing increases he had already been awarded.

Yet Mr Justice R. T. P. Gravely, in his judgement, is stating very clearly, in referring to part VI-A, which I



understand is obviously Bill 4 amending Bill 51, "Counsel for the minister argues that while part VI-A does not void increases set out in these orders it does void increase in the notices of phase-in which had first effective dates beyond October 1, 1990." This is the date we are discussing in this amendment now. "He contends that the orders did not set out rent increases for the periods covered by the notices."

Justice Gravelly in his summation talks about the ambiguity: "Counsel for the minister argued that if phased-in rents contained in a notice are meant to be treated as part of an order, then there would be no need to deal with phase-in notices in sections 100b(2), 100n(7) and 100q."

"Perhaps these references are redundant. They may be legislative overkill to ensure that there is no doubt that notices do not give greater rights than do orders. If their presence raises ambiguity as to the interpretation of section 100b(2), then that ambiguity must, in my opinion, be resolved in favour of the applicant."

In his finding he says, "By 100b(2), therefore, these increases were excepted from the operation of Part VI-A. It was not open to the minister to treat the relevant notices of phase-in as void." That is a very powerful judgement, because here is an independent legal ruling made by the court, under Justice Gravelly, that something the minister was claiming was within their powers under that bill in fact were not. When we are talking about Bill 121—and we were hoping for remedies to this possibility of a ruling being part of Bill 121—the fact is that we are going to get into the same number of problems of appeals to the power and the jurisdiction under Bill 121.

I think that is a cause of concern to everyone in this province, landlords, tenants and the public alike, because every time we go through a court proceeding, no matter which side you are on it costs a great deal of money. If the Ministry of Housing is there, we are looking at a very big investment of taxpayers' money fighting these cases, which, if we had very clear, well-drafted legislation, would not have the scope to be on the table in the first place.

1500

**Ms Harrington:** I believe Mrs Marland has pointed out and explained what this ruling is about, that is, she has used the word "ambiguity." What the judge has found is that the wording was not clear. It was a technical ruling. The judge has recognized that the government is certainly within its rights to do this, but it has not put it clearly enough. In fact, one of the clauses he has overlooked—I will ask one of my assistants to explain the details of that. Certainly, the public and tenants across Ontario—tenants are included in the public—are very concerned about this and I think we should explain it as clearly as possible. I will ask Colleen to clarify this, or if we have a legal person. I think the public certainly should know that the government is firm in this. It was just a technicality and this will be clarified.

**Mrs Marland:** You are saying the judge overlooked another clause?

**Mrs Harrington:** I will ask my assistant to clarify.

**Mrs Marland:** I just wanted to know if I heard you properly.

**Ms Parrish:** I do not want to talk too much about the Moretta decision. As people may know from reading the press, the ministry is appealing that decision and I think it is appropriate that we allow the Court of Appeal to decide whether the ministry's arguments are right.

I would just point out that the Moretta decision does not deal with capital repairs at all; it deals with financial loss and phase-in of financial loss. I guess it is an interesting case and the member has explained a number of points about it, but in terms of whether the Moretta decision affects capital applications in the transition period, it dealt entirely with financial loss and not with any capital repairs.

I just thought it might be useful for me to step back and respond to the question as to why the ministry was reluctant to go into the fall period of 1989 and why January was picked as the date. I think that is the question that is coming up relevant to the amendments of Ms Poole and also to a similar amendment by the Progressive Conservatives.

**Ms Harrington:** Have we clarified the point about the case?

**Mrs Marland:** Ms Parrish, are you confirming today that the ministry is appealing the Justice Gravelly decision?

**Ms Parrish:** Yes. We already indicated in the press at the time that we intend to appeal that decision.

**Mrs Marland:** It was rumoured in the press that you intended to appeal it.

**Ms Parrish:** We will be appealing the decision, yes.

**Mrs Marland:** We have not had an affirmative that you were going to.

**Ms Parrish:** I am sorry, I had not realized that. I was on vacation. We are appealing that case. As a matter of fact, I believe we may be filing our papers as soon as this week. We are certainly working hard on it.

**Mrs Marland:** The appeal of this case is very significant. When the decision was handed down just prior to Christmas, we heard that someone in the ministry said, "Of course we'll appeal it." It was reported in the press as a rather offhand, off-the-cuff response. We were hoping that when the minister had time to consider the judgement, had time to read and review it, the ministry obviously would not appeal this decision.

If the decision takes another year to go through the Court of Appeal, and say the judgement changes, what we have is a situation where these tenants do not have any idea about what is going on, and maybe they are going to have to pay back rent; that is a possibility. In the meantime, these tenants are really hung out to dry. Nobody knows what the outcome is going to be because the ministry is, as we now know, appealing this decision.

Mr Chairman, even though you have clarified the amendment in front of us as dealing with capital increases, the precedent is set. I think what you are going to have with this decision are a lot more appeals, because we now have a precedent in law, albeit it is being appealed. The whole process means there has been one decision by a judge who upheld one interpretation of the law, so the minister is now going to drag everybody through that process again at untold thousands of dollars of expense.



I guess I want to ask why it is being appealed and is it relative—

**Mr B. Ward:** On a point of order, Mr Chairman: I would appreciate it if the Chair could explain the relevance of this discussion to the particular bill we are discussing, with the appropriate clause. I believe the member has gotten off track to a degree and we should get back to the subject we are discussing.

**The Chair:** I believe the discussion relates to the transition part of the bill and Mrs Marland is in order in speaking to that. I believe the parliamentary assistant also has an interest in speaking to it, so I believe she is in order.

**Mrs Marland:** Thank you, Mr Chairman, for that ruling. I understand that a few moments ago the parliamentary assistant mentioned there was another clause in the bill which the justice did not address, or "chose to ignore" I think were your words. Ms Parrish did not refer to that and I wonder if she would like to refer to it now.

**Ms Harrington:** By way of introducing staff, I would like to answer one of your questions, in that we have asked for an expedited hearing. I want to reiterate that the judge has said phase-ins are not void. It is merely that the judge thought the wording was not clear enough and that it is up to us to make that clear. You have asked about a certain clause; I was going to ask one of our legal people if they would like to explain that any further.

**Mr Mammoliti:** On a point of order, Mr Chairman.

**The Chair:** If you would like to sit down with one of your legal people, I will entertain a point of order from Mr Mammoliti while you are doing that.

**Mr Mammoliti:** I am not too sure we should allow this questioning to happen. This is going a little fast, I think, and I am not too sure whether legally they should answer any questions at this point. I think we should leave that to the courts.

1510

**The Chair:** Thank you for the point of information, but I believe it is up to the ministry to speak for themselves and we will allow that. Perhaps you would introduce yourself for the purposes of Hansard.

**Ms Brandon:** I am Cynthia Brandon. I am a lawyer with the rent review section of the Ministry of Housing.

As has been indicated, we are asking that the appeal be expedited. We will be filing our notice of appeal. If it has not been filed already, it will be filed early this week. As a result, we hope to have this matter brought on as soon as possible. We are hopeful we may have it heard at the appeal level in February or March.

In terms of the appeal itself, without getting into the legal arguments of what will be argued on appeal, I would indicate that it is our position that parts of 100b(2), 100n(7) and 100q were not provided with any meaning by the judge's interpretation of the part of 100b(2) that he did give meaning to. It is really an argument as to the interpretation of the wording, whether significant meaning was given to each part of it.

I do not know that I can really expand much beyond that. The basis of the appeal is simply that he misinter-

preted the legislation, rendered parts of it meaningless and found ambiguity where we do not believe there is ambiguity.

**Ms Harrington:** I want to request clarification for you, Mrs Marland, to let everyone know exactly where this is at.

**Mrs Marland:** What is this magical clause that he ignored?

**Ms Brandon:** Part of it would be 100b(2), with the references to rent increases set out in notices of phase-ins. It is a matter of what meaning is left to be given to that clause in the part that he interpreted, 100n(7) and 100q, and reading the legislation in its entire context, whether or not appropriate meaning has been given even to 100b(1).

**Mrs Marland:** So this is just a normal battle of legal opinions, as to who interprets what and how.

**Ms Brandon:** Exactly. I would say that is a fair assessment.

**Mrs Marland:** Nothing is new. It is just that you are going to go through the process and hope to convince whoever hears the appeal that there is another way of interpretation.

**Ms Brandon:** The proper interpretation we are hoping will be decided for the ministry, yes.

**The Chair:** Mrs Marland, if you would like to continue your discussion of the Liberal amendment to subsection 16(1).

**Mrs Marland:** I think what this whole discussion points out, when you look at the history of the problems in the drafting of Bill 4, is that in drafting such significant legislation as Bill 121, the fact that in Bill 121 we have a bill with some 140 sections and that we have this horrific situation of over 200 amendments, obviously that speaks for itself. Bill 121, even with the experience of Bill 4, probably is not drafted any better than Bill 4. That is why we have so many amendments. If you disregard the opposition parties' amendments, the government itself has over 100 amendments to its own bill.

I appreciate the fact that the ministry's legal department has asked for the appeal date to be expedited, and hopefully it would be in February or March; I think that is what they said. Even so, there is an example of why we are asking the kinds of tough questions we are asking about the wording in some sections of this bill. It is like anything else. We can write a report, we can write a letter and we can write a statement, and our understanding of those words we write can be totally different from those of the next person who picks that up. We just got a perfect example with Ms Brandon's answer, that they are hoping to go to the appeal court and through their arguments prove that Justice Gravely took a meaning that was not actually there in the wording of Bill 4.

**Ms Harrington:** We certainly appreciate that the opposition is trying to help us with this process. I know that is what you are there for.

**Mrs Marland:** Anything, Ms Harrington, that we can do to help clear up this mess, of course we want to do, because in the midst of this kind of chaos that this legislation is going to bring to this province we see a lot of



people being hurt. We see landlords, property owners, being hurt and we certainly see tenants, as a result, also being hurt.

What our party is trying to do is to say that if this is the kind of legislation you are bound and determined to bring into this province, then let's try to make it work. I think the Liberal amendment that is on the floor right now, which is so similar to my own amendment, except for one month, is trying to appeal to the logic of the ministry, and in particular that of the minister, to say: "Look, this is unjust. It is unfair to make it January 1990."

The people who have been caught out may not be the people this socialist government cares about, but it says it cares about the tenants, and it will be the tenants in the long run who will be equally hurt. More than that, if this bill is so mismanaged because it is poorly drafted, it is the taxpayers in this province who will be hurt.

First of all, it is the taxpayers who have to pay for the legal challenges and the process through the courts. That is an endless expense that should be avoided, especially when you get into appeals. It is entirely possible that Mr Moretta may wish to appeal again. So here we have a situation where just in one area in the existing statute we have a problem.

When we talk about ambiguity in Bill 4, we have not only ambiguity in Bill 121; we have wording in Bill 121 that nobody has a definition for. How many days and weeks have we asked for very critical definitions of words in this bill that whole sections pivot on?

**The Chair:** If I could be helpful, the Liberal amendment is really discussing a change in the date in particular, and that is where we should be focusing our discussion very carefully, on the difference between the date that is proposed under this amendment and that of the government suggestion.

**Mrs Marland:** The difference in the date, going to September rather than January, is not a small matter. It is a very significant matter. As far as we are concerned, it points out the problems with the overall bill. It is just one further example of why the government section 16 for October 1990 is totally unjust, totally unfair.

**The Chair:** Thank you, Mrs Marland. If the committee would indulge the Chair a question, could you tell us how many applications or how many units might be involved in the change of date? That is really what we are discussing. Does the ministry have some information on how many units might be involved?

**Ms Parrish:** There are very few actually filed, but of course we have no way of really knowing what is out there that might come out, in a sense. All we can look at are people who have already filed, but we do not know somebody who might be out there who has not. The number that have actually filed is a very small number, I think fewer than 10.

The one comment I would make is that as you go back to the fall of 1989, you have a bit of a problem with applications occurring during that period, and the problem goes like this: In some cases people who had made application, who had done capital expenditures at that time and

did not apply, might not have been permitted to apply under the old statute either. In other words, they would have been past the time when they would have been allowed to do so. Under the old act, the Residential Rent Regulation Act, you could not do a capital repair and then wait a couple of years if you decided you wanted to apply for it many years back. You had to apply within a very specific period.

1520

The concern was that we did not want to give people rights to make an application for capital repairs that they would not have had under the previous statute. In fact, we would have given them more rights to apply for a capital expenditure than they would have had before. So for anything occurring during that period, you would have had to have some sort of rule that if you were allowed to apply, you would not be allowed to apply if you had not been able to apply under the old statute. That becomes a very difficult and complex issue.

It is very difficult for tenants because tenants are not going to know whether their landlord would have been allowed to apply under the old rules. Therefore, you have the problem that tenants, when you go back such a long time, have not prepared their case or maintained their own materials to defend their positions, because they may have had good reason to believe their landlord could not now make an application and they have not kept all this material from this fall period.

If you decided to go back into this period, you would probably have a lot of problems for tenants who would have had a legitimate reason to believe they would not have to defend a capital application and therefore did not keep the material, the evidence they might have put forward. You would also have to have a somewhat complex regime to figure out who would have been barred from taking this application under the previous statute.

It was felt that under those circumstances it was appropriate to do the cutoff at that level. We are already going back some considerable time and I am sure there will be some cases where tenants simply have not maintained the evidence related to capital expenditures done a year ago, or two years ago now.

**The Chair:** Ms Poole.

**Mrs Marland:** Something further on that point.

**Ms Poole:** I just wanted to ask for clarification of something Ms Parrish said. I do not intend to be very long, if you would like to get back on—

**Mrs Marland:** It was just on one point, when Ms Parrish mentions the evidence. Can you give an example of the kind of evidence you are referring to that may not still be available?

**Ms Parrish:** Under the old statute, for example, evidence of neglect, evidence that work was not done that the landlord claimed for—the landlord said, "I replaced this," or, "I did this," or some other thing and in fact they did not—service withdrawal: There are a number of things the tenants might have done. They might have taken pictures or taken evidence from tenants who were leaving about



whether work was done or not, or whether they got a new stove, fridge or whatever.

**Mrs Marland:** Is that capital?

**Ms Parrish:** Yes, it could be capital.

**Mrs Marland:** Are appliances capital?

**Ms Parrish:** Under the non-transition provisions, if I can put it that way, you have to meet all these necessary tests, but for the transition capital it just has to be capital that would have qualified under the old statute. It could be appliances or it could be our infamous marble lobbies and microwaves. For the transition period we are simply using the old test because of the difficulty of demonstrating all the new tests under the new statute when nobody knew all this was happening in 1990.

When you go back to the fall of 1989, you are going back quite a long time and you develop, to be blunt, a straight evidentiary question, that people are supposed to adduce evidence as to whether they did get a new stove as opposed to a second-hand stove or whether X, Y or Z was replaced. For the tenants, not knowing the landlord was going to make an application and having their application revived under our statute, in essence, when they might not have been able to apply under the old statute, it would become a very complex and difficult situation.

Obviously when you draw a line there is always somebody on one side or the other, but our view was that when you get into the fall of 1989 you get into situations where you may have actually revived the landlord's right that would have expired under the previous statute, and you certainly have evidentiary problems for the tenants. That is the explanation I can give. I understand you may not agree.

**Ms Poole:** I would like to ask for a clarification from Ms Parrish as to what she said a bit earlier. You have in effect said that one of the problems is that there is a time period during which the application must be made or there would be a lapse. Are you telling me that if the work was completed on December 20 and the first rent increases were to be effective as of October 1, 1990, that was caught in the freeze, the time would have elapsed and that could not have continued under the old legislation?

**Ms Parrish:** I do not know. The problem is, when you get into the fall of 1989 you are getting into a grey area. What you will get are some applications that would have elapsed if they had not been made and some that would not have. The problem is not really that there are no applications in this period at all that would qualify. The problem is that there might be some that would not have qualified. You have this sort of mixed bag during this period of time, and therefore you would have to have very complex rules in order to say, "These ones are sheep and these ones are lambs and we'll figure this out."

For tenants who are not necessarily going to know when the landlord's base year or reference year was, you are going to get a lot of difficulty figuring that out. Obviously we have a line-drawing exercise. I could probably find something on August 28, too. When you have a line-drawing exercise it is always difficult to draw the line. The problem about getting into the fall of 1989 is that you are

going to raise more of these kinds of grey-area problems, and then the question is, how possible is it to adduce evidence for this period of time and how many complex rules are you going to have to have to screen out landlords who would not have been eligible under the previous legislation and have now had their ability to apply essentially resuscitated?

**Ms Poole:** Basically, you are saying the difficulty is that you are using a new test to refer to something that has happened in the past when they did not know the test was in existence. You used words to that effect a bit earlier.

**Ms Parrish:** The tenants may find the landlord's application has been revived when they did not expect that would happen. Of course tenants, as tenants are not in the business of being tenants—they are just tenants—do not maintain business records, so the problem of evidence is more difficult for tenants than it is for landlords.

**Ms Poole:** It surprises me to hear you say that on the one hand, yet when we are looking at sections like subsection 16(2) where we are talking about going back in time and not allowing any capital expenditures if there was neglect, the same principle holds: It is extremely difficult to prove neglect or otherwise two years after the fact. What might be in a certain state now might not have been at the time.

I would think you would want some sort of consistency if you are going to say in this particular case you are cognizant of the fact that you need to be able to ensure evidence was provided during that period, yet in the very next section we are going to be dealing with you have said you are going to apply new rules to an old situation when that same evidence may be extremely difficult to obtain.

I, for one, do not have much sympathy for landlords who neglect their properties and then try to capitalize on it. I am not talking about that situation. I am trying to say that to guess what the situation is after the fact, if you are not going to allow it in one area then you should not allow it in the other.

I am also trying to piece together your comments about how some applications might get into a grey area from the fall and some might not. I wonder if it would be acceptable for the ministry if we did take a second look at this amendment. We could consider changing the wording so that if time has elapsed—and time would have elapsed even if they were under the ordinary situation and had been able to apply and Bill 4 had not frozen the state of affairs—I think we could probably amend the amendment to ensure it met the government's concerns.

**Ms Harrington:** The point of view of the minister is that we have very carefully considered a lot of these things we have just been discussing and a decision has been made that this is the most appropriate date and it is time for the decision to be carried forward.

**Ms Poole:** I guess that then goes back to the earlier comment. I actually choked when Ms Parrish, or maybe the parliamentary assistant—one of you made the comment about the logic of the minister—I started to choke but it was purely coincidental, I am sure—in saying, "This is the date and therefore we're not willing to consider any other date."



**Ms Harrington:** We have considered the dates.

**Ms Poole:** Not after you initially made the decision. I do not think there has been any reconsideration. There certainly does not appear—

**Ms Harrington:** We have looked at all the factors that contribute to the choosing of this date.

**The Chair:** Thank you. Shall the Liberal amendment to subsection 16(1) carry?

**Mrs Marland:** Mr Chair, if you are going to take that vote, I would like to get my colleague in the room.

**The Chair:** You are requesting 20 minutes, Mrs Marland?

**Mrs Marland:** Yes, please.

**The Chair:** The committee will reconvene at eight minutes to 4 to take this vote. The committee is adjourned until then.

The committee recessed at 1532.

1552

**The Chair:** The committee will come to order. We are dealing with a Liberal amendment to subsection 16(1).

**Mrs Marland:** A recorded vote, Mr Chairman.

The committee divided on Ms Poole's motion, which was negated on the following vote:

**Ayes—3**

Marland, Poole, Turnbull.

**Nays—6**

Abel, Harrington, Mammoliti, Morrow, Owens, White.

**The Chair:** We have a Conservative amendment to subsection 16(1).

Mrs Marland moves that subsection 16(1) of the bill, as reprinted to show the amendments proposed by the minister, be amended by striking out "1st day of January 1990 and before the 6th day of June, 1991" in the fifth, sixth and seventh lines, and substituting "1st day of October 1989 and before the day this section is proclaimed in force."

Mrs Marland, do you wish to comment on this amendment?

**Mrs Marland:** Obviously this amendment extends the eligibility of transitional applications to include those applications caught by the introduction of Bill 4, thus the October date up to the proclamation of this act. We have had many, many examples before this committee, when it was holding its public hearings, of the kinds of hardships we are talking about, caused by applications that were caught in that transition period. I think there is enough firm evidence in the record to support the necessity for this amendment should the government choose to observe and consider the concerns of those people who were caught. If the government chooses to ignore them, however, as I said earlier, the very people the government seems to think it is trying to protect will be the people who in the long run will be hurt.

We are very concerned about tenants in this province. We are also very concerned about the supply of rental accommodation, and the decrease in rental accommoda-

tion stock is happening because of the limitations put on those property owners now. In this case, when we are dealing with this section where people have had approvals for legitimate, reasonable rent increases—which incidentally the tenants are happy to pay rather than have their buildings run down and their facilities and services deteriorate—I think the answer and the evidence is there for anyone with any common sense, should they choose to consider it. The amendment is obviously very much needed, and I hope there will be support for it.

**Mr Turnbull:** I have come to the conclusion that no matter what we say, we are not going to significantly change this bill, simply because the NDP does not want to listen to what we have to say. Nevertheless, it bears mentioning once again that the people who need affordable rental housing are not being served by the current legislation. What we are trying to do with this amendment is stop landlords going bankrupt. People who had undertaken renovations during the period immediately before the NDP came into power and had not been able to get their costs flowed through have been hit. We were promised by the previous Minister of Housing at the time we were discussing Bill 4 that when the permanent legislation came in, there would be a way of addressing this issue. By choosing the date we have chosen, it would accommodate those people who had undertaken the expenditures prior to the NDP being elected.

It is a very fair approach. It is not gouging; it is simply saying that the people who had complied with the then existing law should be able to be compensated. That is the thrust of this amendment. There is nothing sinister behind it. It is a way of ensuring that those landlords do not go into bankruptcy. A lot of them are teetering on the brink right now. We know there are going to be further court challenges to the legislation, some of which are already pending.

Surely the government would want to react at a time we have a deepening recession and have a lack of confidence from the business community. Surely we want to send out some signals that the government is prepared to address the very real problems of these landlords, not drive them out of business, and in that way try and revive the confidence in the economy which is sadly lacking under this government.

**Ms Poole:** In light of the fact that this is a shorter time frame than the previous amendment, I wonder if the parliamentary assistant would be willing to reconsider her position that January 1 is the one and only date they will consider.

**Ms Harrington:** Thank you for the question. As Mr Turnbull has pointed out, this minister, as well as the previous minister, has given a fair amount of consideration in response to what Mrs Marland has said. We have considered all the options, and a lot of common sense has come to bear on this dealing with the landlords who have done renovations during this time period. My assistant here has explained to you all the ins and outs of those decisions. This is the date we have decided on.



**Mr Turnbull:** Excuse me. Your associate has not explained all of the ins and outs as to how that date is arrived at.

**Ms Harrington:** A fair number.

**The Chair:** Thank you, Mr Turnbull. Ms Poole, you had the floor.

**Ms Poole:** I want to go back to the fact that the date chosen was January 1. Part of the rationale for that was that there was apparently a grey area where applications in the fall of 1989 might or might not qualify under the Residential Rent Review Act. I wonder if Ms Parrish could be a little more specific about this particular problem and which applications it would most likely affect and how many, and the depth of concern about this problem affecting the ones in the fall of 1989. Is it going to affect all of them, a few of them, half of them? Is there any analysis of it? Most important, I really am not clear from what you have said what the problem really is, why some of these would not be eligible. What time frame specifically were you referring to?

1600

**Ms Parrish:** This is a very complex answer. This amendment does not say you have to have made an application, so of course, as I do not know who might have applied but did not apply, it is very difficult for me to say how many cases are out there. If you look at who did apply, there is a very small number of cases. The problem is that this section could revive the right to apply of a landlord who had lost his right to apply. The reason they lost their right to apply is based on when their base year and reference year is. It is a very complicated system, but essentially it says you have to apply within a certain period of time. There are some cases in this period of time that, if they did not apply during the relevant period, would have lost their right to apply under the previous statute. It depends on when their reference year and base year was, and that usually depends on when their financing was. That is the group. We do not create the base year or the reference year for the landlords; they choose it themselves. That is not something the ministry would control. That is the population.

On another level, I think the minister and the ministry were really trying to address the fact that if you go back too far it becomes very difficult for tenants to put their viewpoints forward, because you are dealing with a period which is so far in the past and the tenants simply did not anticipate having to defend these applications.

**Ms Poole:** First, we are talking about only a three-month period to go back. Second, I cannot see why the government could not accept this amendment and put a rider on saying "provided that the application meets all the criteria established under the RRRA with reference to eligibility and time frame." I mean, you do not have to specify. Then, if it meets it should be considered; if it does not meet and would not have met, it should not be considered. If there are only a small number, I do not understand why the government is being so adamant and inflexible.

**Ms Harrington:** There are only a small number who have applied. We have no idea how many out there might apply.

**Ms Poole:** But if a landlord did apply for that period, the landlord would have to provide bona fide receipts. I cannot see whether there would be a lot of additional applications. I think you are probably dealing, in the vast majority of the cases, with the ones who have already applied, and you have admitted that is a very small number. It is highly unlikely that people who did not apply for a full year would now suddenly, two years later, decide to apply, particularly with the tightened restrictions you have put in under this act.

**Ms Harrington:** As we have said, we have looked at the difficulty of drawing a line and considering the cases before and after the line. We believe this is the best date, as we have discussed.

**Ms Poole:** So there.

**Mrs Marland:** It is very simple to say we are dealing with drawing a line. What we are really dealing with is drawing a line and inserting a knife, because what happens as a result of this arbitrary line? When you make any legislation retroactive—it does not matter what kind of legislation—there are always going to be people who get caught. But there are also ways of dealing with that. I do not see any difference.

You are talking about the fact that everybody is going to have to come up with evidence. Say some property owners do apply who did not previously apply. They are still going to have to bring forward the same evidence, as the member for Eglinton said, the bona fide documents. What is the difference between having to provide that kind of evidence in this kind of case, as with a rent review application—I am not sure what you call it—where the tenant applies for a rent review going back over a number of years? That case was referred to earlier here this afternoon. I am not going to refer to it again by name, but in that case you have a tenant who is applying for a rent reduction based on the existing legislation over that number of years. The documents have to be provided by the property owner to justify the rents. What is so different between providing documents when you are defending your rent, as in the case I am referring to, and providing documents to prove you have done X amount of work? You know the case I am referring to.

**Ms Parrish:** I am sorry, I am not sure. I am puzzled. I do not mean to be difficult.

**Mrs Marland:** I am not familiar with the correct terminology, but if I am a tenant and it is my feeling that my rents have exceeded the legal rents over a number of years—

**Ms Parrish:** You are applying for a rebate.

**Mrs Marland:** A rebate. When I apply for a rebate, it may be that my landlord has to go back eight, nine, 10 years and dig out the documents if there has been a renovation involved, for example, or a remodelling. Is it not true that the landlord has to provide the documents that prove the renovation was done: the receipt for work done, the receipts and documents to prove that certain things were purchased? Is that so?



**Ms Parrish:** It depends on what the case is about and on whether there has been a pre-existing order. If there has never been an order on a property, you do this thing called base rent justification, in which you may go back in time to establish what the legal rent was. If there was an order on the property, you only go back as far as the order; you do not attempt to go back any further in time.

**Mrs Marland:** Right. In this case, I understand there is not an order. So what is the difference between gathering evidence as a property owner—if I were a landlord and my tenant said, “I think I’m entitled to a rent rebate because I think I’ve been paying above the legal guideline for a number of years now,” the appeal process for that rebate requires that the property owner provide legal evidence that he has in fact spent the money he says he has spent, which allows him to do two things: perhaps change the rent totally because they have changed the configuration of the dwelling totally—what is the difference between when that happens and you go back in time, and what we are talking about here, which is not going back in time very far, if a landlord should apply under this section?

**Ms Parrish:** I cannot really speak as to specific cases, as you can understand, especially if they are ongoing. I am not being obtuse, but I am really not too sure which case we are talking about. The point I would make is that here you are really dealing with the reasonable expectations of the tenants that they would have to defend these applications that would not have been allowed under the previous statute because of the elapsed time. Tenants, unlike landlords, are not required by law to maintain business records so I think there is a distinction that could be made.

The amendment, as proposed—not with Ms Poole’s variation—could revive the ability of a landlord to apply when he had lost that right. Therefore the tenants would have thought even under the previous statute, not under Bill 4 but under the previous statute: “My landlord is not going to apply for this. He is not going to ask for a rent increase for this.” Then all of a sudden, as a result of a change in the date, the landlord can apply for something that he could not have applied for before, and the tenants of course, if they had maintained evidence for some period of time thinking the landlord might have applied, certainly would not have maintained this evidence for two or three years just thinking that something might change in future.

I think Ms Harrington pointed out that you are drawing a line and you will always find people on either side, but I think tenants do not maintain business records. They are not required by law to maintain business records and there is a distinction there in terms of who has the burden of proof, the landlord or the tenant.

1610

**Mrs Marland:** You are saying landlords may now have an option to apply for something for which they could not have applied before, or chose not to. Could not have or chose not to?

**Ms Parrish:** At some stage, they chose not to. They let enough time go by that they could not have.

**Mrs Marland:** Okay, but the point I am making is, you said that landlords by law have to keep records, and I

would certainly hope they do. But it is very interesting because when we deal with other sections of Bill 121, we are going to be dealing with history in terms of tenants. Under Bill 121 you are going to allow tenants to challenge what is a capital expenditure by legitimate need against a capital expenditure by neglect.

The argument you are giving against this cannot be used in both examples because the example I want to give you is this: If the landlord has neglected to do ongoing repairs in the underground garage for example, and what could have been a question of maintenance for a number of years is now going to be proven as neglect, you are going to allow these same tenants who by law do not have to keep records, by your own words—and the tenancy may have changed; they may not have the ongoing word of mouth about how long that hole was in the roof, in the garage or whatever it is—you are now going to allow that evidence to come forward without any tangible strength or continuity against an application by a landlord.

In that case, there is an example of where suddenly the tenant is now able to argue back in history against an application by the landlord. Yet in the section we are discussing at this point, you are saying, “Oh yeah, but we can’t go back because the tenants won’t have their records.” I have to ask you, how are the tenants going to have their records in any of the cases in this bill under which tenants can apply for rent decreases?

I realize we are not talking about rent decreases but you have just raised a very important point, because what you are saying against the amendment we are dealing with now is that it cannot happen because it would not be fair, because nobody has records. How fair is it going to be when they apply for something else in some other section of this bill and what better are their records going to be for that section?

**Ms Parrish:** I know we will have the opportunity to discuss the issue of neglect in subsection 16(2), so I do not want to get too far afield. But I would note there is a difference between having the opportunity to bring forward evidence the tenants have and having the obligation to defend a specific application for which you would have had to have specific evidence. I think there is a distinction.

I understand you do not agree with that distinction, but I do think there is a legitimate distinction to be drawn as to the period of time. Obviously, when you draw the line, there can be a difference of opinion as to where it is. I can only explain to you the rationale given to the best of my ability. I think there is a distinction between opportunity to provide evidence—tenants will still have to provide evidence to the best of their ability—and the obligation to defend a specific application, and whether or not there was a reasonable expectation that this would have been required.

**Mrs Marland:** Okay. I do not want to discuss the neglect part because we are going to get into that too, but you cannot look at one without looking at the other. When you discuss neglect you are talking about two sides, two opinions, one saying it is not neglect, one saying it is neglect. Both will have evidence. In this glorious situation, these rent officers are going to decide who is right, even if it



involves thousands and maybe millions of dollars to some investor and certainly, we know, an adverse impact on tenants.

Here you have a situation where in one case the evidence can be provided by the landlord, and the evidence can be provided by the tenants when we are dealing with neglect. That is acceptable apparently, because we have already discussed neglect a little bit earlier in the bill and found that the judgement of the rent officer will be made based on the evidence in front of him.

We are saying we cannot change this retroactive date because as soon as we do we put it back two or three years and maybe the tenants will not have their evidence. What I am asking you is, how come we think the bill is going to work? They are going to have the evidence in the case of neglect, but if the property owner is applying for a legitimate rent increase under the statute that existed at the time, you are saying, "No we can't go back and let them look at that because the tenants won't have their legitimate evidence."

Now I hear you say that, I cannot understand how you could be so grossly unfair. It just does not make sense. There is no continuity of argument on your part there. On the one hand you are saying, "It's okay. We know the tenants will have the history and we know they'll be able to provide legitimate evidence." On the other hand you are saying, as in this case: "No, we can't ask them to do that. We can't expect them to do that because they are not required by law because the tenants are not in a business."

**Ms Harrington:** Mrs Marland, I believe Ms Parrish has explained her distinction between the points you are making and I think that is all she can do.

**Mrs Marland:** Are you not allowing her to say any more?

**Ms Harrington:** I think she has answered your question.

**Mrs Marland:** All right, let's go to other example then, if you do not want her to answer that question.

Let's go to the example where a landlord has a major rent increase and has a new tenant in the building who pays this major rent increase for a number of years. Then the current tenant decides maybe that was not a legitimate jump in rent when the major rent increase took place and is going to apply for a rent rebate.

In that case, there are going to be two lots of evidence too, I respectfully suggest to you. There is going to be the evidence that I understand you require from the landlord to prove that certain work was done, as I said a few moments ago—maybe a remodelling, a renovation or a changing of the configuration of that accommodation—that made the rent increase legitimate. In this case you are asking the property owner for proof, bona fide documents, that the work was done, that money was spent and that these were the costs. I understand you accept that. Pardon me, the ministry does not accept it, the panel which hears the evidence under the act accepts as evidence bona fide documents of expenditure. Is that correct?

1620

**Ms Parrish:** What would constitute acceptable evidence would be determined by the panel hearing the case. I

assume you are speaking about the current statute and not about what the law would be under this statute?

**Mrs Marland:** I am speaking about under the current statute.

**Ms Parrish:** Whether evidence was good or bad would be determined by the panel. It is an issue of credibility, the substance of the proof and so on. It is not an issue which is determined by the words of the statute but on the evidence.

**Mrs Marland:** But you have enough experience to be able to tell us that in normal proceedings where the tenant applies for a rent rebate, the landlord, the property owner, has to provide these documents in whatever form they are. The landlord has to provide documents of proof of expenditure. Is that right?

**Ms Parrish:** It depends on what the rebate is about and what the defence of the landlord is. There are a number of defences, but the person who brings the case, the tenant bringing the rebate application, has the burden of proof to do what is called a prima facie case. Then landlords have to bring their defence based on their proof. The evidence is weighed, as well as the credibility of the parties and so on. That is a decision which is made on a case-by-case basis. Evidence is weighed. That is the case in all hearings. I am not too sure where these questions are going. It is not appropriate for me to debate with you. That is why I am not—

**Mrs Marland:** No, I am not asking you to debate with me. I am asking you to tell me whether I am on the right track. I am asking you to confirm for me that in the one situation landlords have to prove they have spent money on their accommodation in order to be eligible for different types of rent increases. I think that is fairly simple.

In the case of a rent rebate under the current legislation, if the rent increase has exceeded a legal limit, then landlords have to prove they have spent a certain amount of money and done a certain amount of remodelling and renovation where the unit under that legislation could be described as substantially changed, as substantially a new unit. In that case the evidence is provided and certainly a judgement is made, but the point I am making is that evidence may be any number of years old, five, six, seven or eight years old. The case that I am thinking of, that I have in mind, I think is seven or eight years old.

Now we are talking about this section and we are saying, "No, we can't go back two years, because nobody can provide enough evidence." That was your reason for not supporting Ms Poole's amendment and for not supporting my amendment now. You are saying it would not be fair because they would have to go back and dig up their records and justify their eligibility and the tenants would not have an opportunity because they would not have the records. It just does not flow that in one case we are dealing with rent control and it is all right to go back eight years and have evidence brought forward and a judgement made, and in this case it is not all right.

**Ms Parrish:** I guess the distinction I would make is that the why in the initial case you referred to did not change. In this case, if you revive the right of landlords to



make an application that they would not have had under the previous statute, then the tenants would be in a situation where they never would have had to defend that application but now they do. That is the distinction.

Again, I cannot debate this issue with you. I am not supporting or posing or anything. I am only explaining things and I think I have explained it as best I can. I can understand that there is a difference of opinion as to whether that is appropriate, and there is certainly a difference between the RRRA and this statute. This statute is a tighter statute. That is true. There are differences between the current law and this statute. That is the case. I personally cannot support or oppose anything. I am just doing my best and clearly not doing a very good job of explaining the rationale, but I think I have given you the information as best I can.

**Mrs Marland:** I am referring to the case of the former Minister of Community and Social Services, Ms Akande's property, which is now under appeal by a tenant. In fact, it goes back through other statutes. It goes back to the legislation prior to the Liberal RRRA, Bill 51.

The point I am making here is that we cannot keep changing the rules, because people get hurt. We have a new government. It sweeps with a new broom and decides that it is going to hammer these people over the head a bit more, that it will make some changes etc, whatever the ideology is of whatever the government of the day is. I give that right to the current government. Any government has a right to pass legislation. That is what it is all about. They put forward their own doctrine, and Bill 121 is an example of socialist doctrine in terms of providing housing in this province. We know that. I accept that as a given.

What I am saying is that when you make it retroactive, which is what this amendment deals with, the retroactivity line you are talking about is very significant because you can suddenly say, "That was another bill and that was another government and we're cleaning it up with this." Yes, we have to draw a line and there are always going to be people on both sides of the line. You bet your boots there are always going to be people on both sides of the line. In this case we are going to have people who can be hurt, because they lose an opportunity they should have been able to have.

You say that these property owners perhaps would not be able to come up with their records satisfactorily. You are not even giving them an opportunity to try to do that. You are saying at the same time that the tenants would not have their records, and yet further on in this bill you are going to accept anybody's records about what is neglect. It is so inconsistent it is unbelievable.

The more I get into this legislation, it does not get any easier to understand. It gets more frustrating. The more you get into Bill 121, the more you realize there are all kinds of loopholes and contradictions. I think that is one I have just pointed out to you. On the one hand you are saying, "No, we can't go back to October 1989 because then we may have landlords applying for increases and the tenants won't have their evidence." Well, in other sections you are certainly going to say to those tenants: "Yes, you

can prove neglect, going back. If you have been in that building for 10 years, we're going to accept your evidence."

This is unfair to tenants and to property owners because it is inconsistent, is not clear and in my opinion is totally unjust. I say with respect that when you read Hansard for today, you will follow the point that you cannot say in one section, "We accept somebody's evidence going back a number of years," and then in the very next section say, "It's not workable because nobody would have their records going back that number of years."

**Ms Harrington:** Mrs Marland, when you read Hansard, I believe everyone will realize that Ms Parrish has explained the distinction between the two types of going back for evidence.

1630

**Mr Turnbull:** One of the comments that was made by Ms Parrish struck me as rather curious. She did not know how many people would apply if they were to change the date. Does that matter? We are talking about a fundamental question of fairness. If you are saying you are going to have a certain date in the bill that you can go back to for some people, and there are others who cannot, that smacks of a very arbitrary government at best.

The suggestion is, "We can't do this because of a lack of evidence on the part of the tenants." That is absolute baloney. It is the NDP's Bill 4 which is the one that complicated things in the first place. We have very easy qualifications as to whether the application is correct. All you have to do is look at the dates on all the receipts and so forth.

If you want to compare it with being complicated, just look at the form tenants and landlords are going to get with respect to capital expenditures under Bill 121, where you have a depreciation schedule and you will have dates of various capital items that are no longer borne. Either the money has been spent or it has not been spent. Why are we arbitrarily saying, "This group of people can get it and other people can't"? That kind of arbitrary approach baffles me. I have several other questions, but I would like to put them as questions, because we are here to try to understand this.

**Ms Parrish:** These are transition provisions. They are trying to move from one regime to another regime. There are certain elements in these provisions—for example, the fact that it can be any kind of capital, not necessary capital—that are designed to make the applications involve fewer elements of proof than under the full-blown rent control system. The question really is that when you have a transition from one regime to another, what is a reasonable period of transition. The government has chosen this period of time. Other people have suggested you might increase it by a few months here at the beginning, a few months there at the end or whatever. It is a transition period.

The government has looked at the period of time. Our instructions are that it is comfortable with this period of time. There were certain considerations given to looking at the fall of 1989 as opposed to the summer of 1989 or whatever. Clearly, there is a spectrum in there. There was a view that it was a reasonable expectation to go back to



January, that to go further back was not reasonable. Clearly, there is a difference of opinion. As a public servant, I can only indicate to you that all these things have been explored. I understand that you and your colleagues do not agree.

**Mr Turnbull:** I understand. Perhaps we can redirect this to the parliamentary assistant. We have a fundamental question. You have some buildings that are included and some that are not. The whole debate revolves around the dates. People have either spent the money or they have not. To a great extent applications flow from when the year-end of a company is or its anniversary date, and its anniversary date relates back in history to all the rent review regimes we have had. Consequently, an anniversary date has been set up, so people will tend to make applications at a certain point in the year. Here we are arbitrarily saying: "For everything before this, you're out of luck." That would be my redirection of this question. I have settled a lot of the questions in this vein, but perhaps the parliamentary assistant can respond to that.

**Ms Harrington:** Basically you are asking, why not an anniversary-type date, an annual-type date. Is that what you are saying?

**Mr Turnbull:** You may have two or three buildings, some that have anniversary dates under the old rent review regime which are such that would mean you already had your application in or would be covered by this, and others that do not. I am asking you, why do you discriminate against these buildings that fall between the cracks, to the extent that you may—there are all kinds of items. As you well know, we feel this legislation is going to send people into bankruptcy. I am trying desperately to make a point. These arbitrary dates just do not make any sense.

**Ms Harrington:** I think we have discussed that question about dates, and Mrs Marland and yourself have said how difficult it is to set a date.

**Mr Turnbull:** No, we have not said it is difficult.

**Ms Harrington:** Mrs Marland said that. We have looked at both sides. We have debated this now for quite some time this afternoon. Yes, we are trying to be as fair as we can. We have looked at this amendment, which is certainly pro-landlord—let's face it—trying to deal with that situation of the interim period, the transition period, and go above the guideline to give some relief. That is what the intention behind this section of the bill is. I think it is clear. We have debated the date and this is the date the government would like to go with.

**Mr Turnbull:** I do not view it as pro-landlord. It is a question of fairness. If people have expended the money, they expended the money under the existing Bill 51 legislation, and in good faith. They were totally within the law when they expended it. It really goes back to any government of any political stripe bringing in retroactive legislation. My concern is we periodically hear the Premier of this province saying that he wants to get a partnership, that he wants business to work with him.

We send out a very powerful message to investors, to the investor in Düsseldorf and the investor in Hong Kong who owns a building and maybe owns an industrial com-

pany. I can tell you that the majority of German investors who have invested in property in Canada are typically people who have small industrial companies. These are the people who are in a position to be able to start subsidiary companies or expand subsidiary companies here in Ontario. We send out the most incredibly negative message. We do not have to spend \$50,000 of the taxpayers' money to send out this negative message. You are sending it out free of charge because you are telling people we are not open for business. What kind of message does this say about the business climate?

**Mr Morrow:** On a point of order, Mr Chair: Can you please ask the member to go back to the amendment?

**The Chair:** I am certain Mr Turnbull was about to bring that very carefully into line with the change of date.

**Mr Morrow:** I appreciate that very much.

1640

**Mr Turnbull:** This goes to the heart of the amendment. If we do not alter the date in this clause, we simply are sending out a negative message to the investors that, "Okay, we as an NDP government can confiscate essentially any investment that people have made." It is an investment they have made in renovations on this building, so consequently we send out that negative message.

I have a couple more questions, but I would like you, Ms Marland, to respond to that: the message you send out relative to the suggestion that we keep hearing from the Premier that he wants partnership with industry.

**Ms Harrington:** I am Ms Harrington, Mr Turnbull. I think we fundamentally disagree on how to go about governing. We believe in dealing with all sectors of the community, the tenants as well as the business people. We are trying to deal with the business community, as you mentioned.

**Mr Turnbull:** Well, it is a terrible way of dealing with them, because you are driving them into bankruptcy. I am interested: What would be the difference between an owner who has been required to spend money under Bill 51, the previous legislation, and then after he has spent it in good faith, he is told he is disallowed this because of the way your legislation has been drawn and the retroactivity, and the case of your government's reluctance to say to workers who have a two- or three-year contract where the wage increases for subsequent years—subsequent years, not previous years—are going to be higher than the inflation rate in the present very difficult situation?

**Ms Harrington:** I think that is a little beyond this particular legislation, but the whole point of this section of the legislation, section 16, is to deal exactly with what you said, those landlords who have put out money for renovations and capital and whatever was allowed at that time.

**Mr Turnbull:** It does not deal with enough of it.

**Ms Harrington:** That is the point of this and why we are doing it, to deal fairly as best we can with these landlords.

**Mr Turnbull:** It does not deal fairly with them, though.



**Ms Harrington:** Maybe you do not agree, but that is what this government is doing.

**Mr Turnbull:** That is not what the business community and the landlord community believe, and there are a lot of tenants who are concerned about this because we have a government which is prepared to spend \$150,000—

**Ms Harrington:** Mr Turnbull, may I just point out that you are talking about 10 cases, to our knowledge.

**Mr Turnbull:** No, excuse me. Ms Parrish made the comment at the beginning that she did not know how many cases there were.

**Ms Harrington:** I understand. I said “to our knowledge.”

**Mr Turnbull:** Yes, okay, but we have sent out a massively negative message about the business climate in Ontario. Yet this is a government that is prepared to spend \$150,000 per unit on subsidized housing when the private sector can produce one for \$89,000.

**Ms Harrington:** I think I have tried to answer your question.

**Mr Turnbull:** It is absolutely inadequate.

**The Chair:** Are there further questions or comments on the Conservative amendment to subsection 16(1)? Shall the Conservative amendment to subsection 16(1) carry?

**Mr Turnbull:** A recorded vote, please.

The committee divided on Mrs Marland's motion, which was negatived on the following vote:

**Ayes—2**

Poole, Turnbull.

**Nays—6**

Abel, Harrington, Mammoliti, Morrow, Owens, White.

**The Chair:** I am advised that legal counsel would like to have a little bit of time for an explanation.

**Ms Baldwin:** There is an issue I should draw to your attention that comes up in the first instance in subsection 16(1). It has to do with the fact that since the committee last sat, between then and now, namely on December 31, 1991, the Revised Statutes of Ontario 1990 came into effect.

One of the things that happened in the revised statutes of 1990 is that the numbering system of the statutes changed. As a result of that, you may recall that the House, some time before it rose, passed a motion in which it authorized the office of legislative counsel to redo the statutes in order to make those changes which would have the correct section references and statute references to correspond with the 1990 revision instead of the statutes that were in effect before then. For example, in clause 16(1)(b) there is a reference to the RRRA, 1986. That is going to be a reference to the RRRA under the 1990 revision, and section 74 will be a different number under the 1990 revision.

What was going to happen in the motion and will happen is that our office is going to be reprinting all the bills to make those corrections for when the House comes back in March. For two reasons I have not done that yet with this bill. One of them is that there has not been time. The other is that I thought it would create extreme confusion

for the committee to suddenly start working with a different version of the bill than they have been working with until now.

Therefore, what I am seeking right now is the committee's permission or understanding that, when this bill is reported back to the House, I propose to editorially make all those changes so that it corresponds with the 1990 revision.

**Ms Poole:** I suggest that as the request of legislative counsel is really of a technical nature, we should have unanimous consent of the committee to allow Betsy to have leeway to make changes after we have considered the act at the time she deems appropriate.

**Ms Harrington:** Thank you very much, Ms Baldwin. That would be appreciated.

**The Chair:** Do we have unanimous consent? We do. Thank you.

Shall subsection 16(1), as printed, carry? Carried.

Are there questions, comments or amendments to subsection 16(2)?

**Ms Poole:** Mr Chair, just a point of clarification. I do not know if I am working with the right act, as we have had a number since we started this excursion, but in my act I have subsections 16(1.1) and (1.2). Were those considered dealt with under subsection 16(1) or are they separate?

**The Chair:** I am sorry. They should be dealt with. I was just charging along a little too fast and I apologize to the committee.

**Ms Harrington:** We appreciate your intentions.

**The Chair:** We will deal, then, with subsection 16(1.1).

**Ms Harrington:** This subsection provides that if there was partial relief for a capital expenditure in an order under subsection 83(3a) or 100o(6) of the Residential Rent Regulation Act, 1986, this section does not apply. This prevents the landlord from obtaining additional relief. These are the conditional orders. Subsection 16(1.1) is a new subsection preventing the landlord from obtaining additional relief under the rent control act where partial relief for a capital expenditure was made under the RRRA after that act was amended.

**Ms Poole:** Just for clarification, my understanding is that this amendment would say that those people who had conditional orders and were caught under the Bill 4 freeze and, because of a Liberal amendment, received up to a 15% relief factor would not be entitled to claim the additional 3%. Is that correct?

**Ms Harrington:** That is what it says.

**The Chair:** Further questions or comments? In that event, shall subsection 16(1.1) carry? Carried.

Subsection 16(1.2).

**Ms Harrington:** Subsection 16(1.2) stipulates that the landlord must make application for capital expenditures allowed under this section within six months of proclamation of this section of the act.

**The Chair:** Questions or comments? Ms Poole.



**Ms Poole:** Subsection (1.2) is shown as an amendment; actually, the whole thing is. I was just wondering, as I do not have my first copy of the act with me, is that a change from the original?

**Ms Harrington:** No, that is the same.

**The Chair:** Shall subsection 16(1.2) carry? Carried.  
Now subsection 16(2).

1650

**Ms Harrington:** Subsection 16(2) states that those capital expenditures shall not be considered if they were due to neglect.

**The Chair:** Questions, comments? Ms Poole.

**Ms Poole:** I brought this up earlier when we were talking about the previous amendment. Mrs Marland also continued on that particular point. What this does is basically say that retroactively we are going to decide what might or might not have been neglect two years ago. Again, I do not see how you can change the rules retroactively. I see how you can do it; I do not see how you can justify doing it. It would appear to any logical, thinking person that if you are operating under a certain set of rules and the government wishes to change those rules, which it is entitled to do, it should be prospective, not retroactive. In fact, legislative counsel have made the statement, I believe in the standing committee on regulations and private bills, that they believe for good legislation it should be prospective, not retroactive.

In this case, what you are doing is saying, "Yes, we know this test is different from the test that was in place two years ago, but we are retroactively going to take you back up to two years and have you provide evidence now as to whether there was neglect."

The first case, as previously cited by Ms Parrish, is what kind of valid evidence is available, on the part of either the landlord or the tenant, from two years previously, when this particular rule was not in place, so they did not know they were operating under this criteria?

The second point we have to look at when we are considering neglect is the retroactive aspect. I really have a problem with how this government deals with legislation. You seem to think you can snap your fingers and make things appear or disappear or reappear, regardless of the order, the sequence, the substance with which things happen in the course of nature.

I really do not see how you can say, after the fact, "neglect"—which we are not going to define, by the way; we are just going to use "neglect" because these super-human rent review administrators are now going to magically appear on the scene, who apparently have never been there before but now are going to be so properly trained that they know what neglect is, even though it is not defined, and we are not only going to have the rent review officers make these decisions, but they are going to make them from two years back when the rules were very different.

If you want to apply "neglect" for the future, I do not have a problem with that. I particularly do not have a problem with it if you are going to define it so everybody knows what you are operating with. But we go back to the fact that you are going to ask tenants and landlords to

spend a great deal of time when they do not know what definition they are acting under, do not know what it means, do not know when the neglect occurred. Do not forget we are talking about work completed as of January 1990. The neglect may have occurred in January of 1988. It may be four-year-old neglect we are now trying to prove.

**Ms Harrington:** I think I understand what you are saying here. You are concerned about the retroactivity of this. This whole section means we are going back to a transition period in order to help those people who have already spent money. You are not telling us that we should not go back to help these landlords, are you?

**Ms Poole:** No, Ms Harrington, with respect, you do not understand 16(2). Subsection 16(2) says, "The rent officer shall not consider a capital expenditure under this section if it became necessary as a result of neglect in maintaining" a residential complex.

**Ms Harrington:** I understand that.

**Ms Poole:** That is not going to help the landlord who has been caught under the transition rules. On the contrary, that is going to penalize that landlord and impose a further restriction. If the restriction is deserved it is one thing, but when you change the rules after the fact—

**Ms Harrington:** Surely, Ms Poole, you are not saying we should go back and help these landlords with regard to capital expenditures that were due to neglect?

**Ms Poole:** But, Ms Harrington, you are not looking at how you determine neglect two, three, four or five years after the fact. You are rewriting history; it is revisionist history.

**Ms Harrington:** We are getting down to a definition of—I would like to ask Ms Poole to explain why this is in there.

**Ms Poole:** Ms Poole does not know why, but you might want to ask Ms Parrish.

**Ms Harrington:** I am sorry, Ms Parrish. I think we both agree about the intent of this—

**Ms Poole:** But no—

**The Chair:** One at a time would be better.

**Ms Poole:** No, this is more fun.

**Ms Harrington:** I think we both agree about the intent of this subsection, to go back to a transition period and pick up capital expenditures. What we are discussing, I believe, is whether it should be, due to neglect, allowed or not. I think I would like Ms Parrish to clarify that definition and why that is in there.

**Ms Parrish:** Under the previous statute, the test was "ongoing, deliberate neglect." There are virtually no cases because it is almost impossible to prove "deliberate" because you have to know something about the state of mind of the landlord. It is hard to imagine that if the landlords knew the test of "ongoing and deliberate neglect" would be changed to "neglect" they would have changed their behaviour in any way. If they knew they were neglecting, they would have met the old test, too. All we are really doing is taking a test which everyone has agreed has never



worked and gone to a test which can have some reasonable chance of being dealt with.

Both landlords and tenants still have to have evidence. You cannot just say, "I don't want the landlord to increase the rent, so I'm going to say there was neglect." There still has to be evidence. Regarding ongoing and deliberate neglect, in the entire period of time we have only been able to find two cases of examples where there has been sufficient evidence as to the state of mind of the landlord. Certainly it is not as if landlords said, "The test under the previous statute was ongoing and deliberate neglect, so I will just neglect and not do it ongoingly and deliberately." In terms of whether it would have changed the landlord's behaviour by changing the test, it seems to me very unlikely.

As the landlords, as Ms Harrington said, are getting the opportunity to bring forward these transitional claims, it does not seem unreasonable that tenants should have a reasonable opportunity to put their viewpoint forward, and under the previous test they did not really have that opportunity because almost no one could prove it.

**Ms Poole:** It is not a matter of whether it was going to change the landlord's behaviour; that is not the question at issue. The point at issue is that you are saying we are going to look at what happened before. Again, it comes

down to what kind of evidence is going to be available of what happened four years ago. The representative from the ministry has said there are virtually no cases of ongoing, deliberate neglect where there was an order because of it. Quite frankly, tenants gave up a long time ago trying to collect evidence on that because under the Residential Rent Regulation Act ongoing, deliberate neglect was not something they were able to prove.

So tenants have not collected evidence. In many cases, landlords have not collected evidence or saved evidence to say, "But I repaired that four times in 1987 and I have all the receipts here to prove it." Maybe some people save all their petty cash receipts from five years ago, but I can tell you when it is now January 13, 1992 and you want to go back in time and expect them to have evidence, it is going to be extremely difficult.

**The Chair:** I am just going to suggest that it appears to the Chair, seeing as we have Mr Mammoliti and Mr Turnbull on the list, that we are not going to get a vote on subsection 16(2) by 5 o'clock this afternoon and that perhaps this would be a good time to adjourn.

I would remind members of the subcommittee that we are having a brief—I hope—meeting.

The committee adjourned at 1701.



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## Legislative Assembly of Ontario

First Intersession, 35th Parliament

## Official Report of Debates (Hansard)

Tuesday 14 January 1992

### Standing committee on general government

Rent Control Act, 1991

## Assemblée législative de l'Ontario

Première intersession, 35<sup>e</sup> législature

## Journal des débats (Hansard)

Le mardi 14 janvier 1992

### Comité permanent des affaires gouvernementales

Loi de 1991 sur le contrôle  
des loyers



Chair: Michael A. Brown  
Clerk: Deborah Deller

Président : Michael A. Brown  
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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON GENERAL GOVERNMENT

Tuesday 14 January 1992

The committee met at 1015 in room 151.

### RENT CONTROL ACT, 1991

#### LOI DE 1991 SUR LE CONTRÔLE DES LOYERS

Resuming consideration of Bill 121, An Act to revise the Law related to Residential Rent Regulation / Projet de loi 121, Loi révisant les lois relatives à la réglementation des loyers d'habitation.

**The Chair:** Before we get into the clause-by-clause this morning, I have a letter in front of me from the minister.

"On behalf of the government, I would like to table further amendments to the proposed Rent Control Act, Bill 121, for consideration by the standing committee on general government.

"These amendments respond to concerns raised about potential delays when work orders are appealed that would delay the issuance of orders prohibiting rent increases; concerns about incomplete applications; clarifying when a matter will be reconsidered due to serious error or fraudulent activities; clarifying that maximum rent will be decreased after capital costs are no longer borne; and providing regulation-making authority to calculate maximum rents.

"In addition to the annotated amendments, there is a chart-form summary to explain these amendments."

Twenty copies have been delivered to the clerk and are being distributed. I take it that all members do have a copy of the government package of amendments. That is good.

#### Section 16:

**The Chair:** We will continue with the discussion of subsection 16(2). I believe Ms Poole had the floor when we adjourned yesterday. Mr Mammoliti is on the list, followed by Mr Turnbull.

**Ms Poole:** Yesterday we were discussing subsection 16(2) in Bill 121.

**Mr Turnbull:** On a point of order, Mr Chair: I just want to point out that in this letter we have from the Ministry of Housing, you can hardly read the amendments. If that is the kind of attitude the ministry has towards people who are considering this, it is just unacceptable.

**Hon Ms Gigantes:** I think the member has a good point, because I find the duplication is less than helpful here. I think we had better look for better copies. It certainly was not our intent to provide bad copies.

**The Chair:** Thank you, Minister. I think we will receive better copies shortly. Thank you for bringing that to our attention, Mr Turnbull.

**Ms Poole:** Subsection 16(2) refers to the fact that when the ministry will be dealing with the transition period applications, "The rent officer shall not consider a capital expenditure under this section if it became necessary as a result of neglect in maintaining the residential

complex or a rental unit in it." Yesterday we were discussing the fact that the test of neglect has changed significantly from the one under the Residential Rent Regulation Act to what is in this section.

Ms Parrish had told us that under the RRRRA the reference was to "deliberate, ongoing neglect." That was the test. She also told us that it was virtually unused because it was impossible to prove. It was impossible to prove what a landlord was thinking and what a landlord's intentions were, so it was impossible to prove. That was the test.

Now, under this particular section, it has been changed to simply "neglect." Again, "neglect" is not defined, but it is definitely a substantively different test than was used under the old legislation. What we are doing here is going back in time with revisionist history and saying to landlords, "If you apply for relief from the devastating effects of Bill 4 so that you can get at least a 3% relief from the capital expenditures you made during the Bill 4 freeze, then you now, maybe three or four years after the fact, have to prove you did not neglect the building."

On the other hand, the tenants involved have the burden of proof of neglect when it may be three or four years after the fact and they have not collected evidence. I say to the minister I think it would be very clear that the tenants would not bother collecting evidence, because if Ms Parrish was correct in saying that ongoing, deliberate neglect was never accepted as a rationale for not granting a rent increase, that it was virtually unknown to happen—and that is certainly my understanding as well—then tenants gave up trying to collect evidence of neglect.

It was not accepted; it was not instrumental in the rulings by these same rent review officers that this government now puts all its faith in to magically make the correct decisions. The way the rent review officers made decisions under the Residential Rent Regulation Act was they decided that ongoing, deliberate neglect could not be proved, so tenants did not bother giving the evidence.

I just do not see how retroactively—again retroactively; this government seems to excel at that—they are going to say, "We are going to change the test," and the test that was valid at the time the landlord did the repairs and in the period previous to that is going to be a different test from what they have to meet if they apply today. It does not seem to me to be reasonable or logical that they would apply a different test than what the landlords were operating under at the time. I think you are going to have the same problems that Ms Parrish mentioned when we were talking about subsection 16(1) and about trying to get evidence too long after the fact. You are going to have the same problem here in spades.

**Mr Mammoliti:** I cannot understand why Ms Poole was attacking our system, the system that we would like to implement and would like respected as well by her government,

seeing that her government is the one that implemented a system that really did not care for the tenants. I cannot understand why she is attacking—

**Ms Poole:** On a point of order, Mr Chair: I would ask Mr Mammoliti to refrain from inflammatory comments which are neither substantiated nor accurate.

**The Chair:** That is not a point of order.

**Ms Poole:** But it is a point of truth.

**Mr Mammoliti:** The point of truth is that you have no right to attack how we believe this system will work. We believe it will work better, and you do not have a right to attack that.

**Ms Poole:** I certainly do. I am an opposition member. That is my job.

**The Chair:** Order.

**Mr Mammoliti:** You have the right, as opposition, to question.

**Mr Turnbull:** Are you dictating? The Liberals have the right to question.

**Mr Mammoliti:** You have the right to investigate, you have the right to ask questions, but you have no right to attack. You have no right in this particular case to say to us that the people we choose to deal with these problems will not be able to deal with neglect. I differ with you and I say you are wrong. I say that along with our system comes a change of attitude, Ms Poole, and that change of attitude down there will prove to be successful, a lot more than your rent review system in the past for tenants. That is why you do not have the right, in my opinion, to attack in this case.

Yesterday Ms Poole said, through you, of course, Mr Chair, that we cannot justify it. I would say to Ms Poole that she should perhaps go around the province and even perhaps my riding. Come along with me one day and we will hit some of the buildings in my riding. Tell the tenants we cannot justify it. Tell the tenants we cannot justify the system we want. Tell them exactly what you have been saying here for the past couple of days, Ms Poole. I will tell you that the tenants will say, "Yeah, it's justified." What we want to do is justified, and, again, you do not have a right to attack there.

What has happened lately in my riding is just ironic. At Weston Road and Finch we have recently learned there is a building that has been neglected, in my opinion. It is beyond words, as I have stated in the past. This building is completely out of order. Not that I am at this point, I hope, Mr Chair, but the building certainly is. I would say to you that when you talk about neglect and what can happen, the particular apartment I am referring to has been neglected completely and because it has been neglected completely in its simple, everyday maintenance, capital work has to be done in that apartment.

You say, "How can you prove it?" Just go up there, Ms Poole. Come with me one day and determine in your opinion, your judgement, whether this apartment has been neglected. I assure you, the people who would investigate through our system, the one you say is not going to be any good, will find it to be neglect. I do and I do not know how

this landlord could have ever let it happen, unless he wants to make all kinds of profit off the backs of the tenants. That is what I am assuming. I hope I am wrong, but in my investigation that is what I am finding. When I approached the landlord, he did not even want to talk to me.

**Ms Poole:** I cannot comprehend why he would not want to talk to you, George.

**Mr Mammoliti:** I cannot understand that either, Ms Poole. I cannot understand that one bit.

**The Chair:** Through the Chair, please.

**Ms Poole:** I can comprehend why nobody would want to listen to you, but I do not comprehend why anybody would not want to talk to you.

**The Chair:** Order.

**Ms Poole:** Sorry, Mr Chair. I apologize.

**Mr Mammoliti:** Excuse me, Mr Chair, for a second. The apartment I am referring to has as well—I could not believe the laundry room, the facility itself. Out of 10 machines, I believe, only two of them were working, eight being out of order for months, the landlord knowing about it and not wanting to do anything and coming out and saying, "I'm not fixing it." All kinds of tenants in the building told me they have had to literally fix up their units themselves. If there was a leaky spindle, they had to fix it; if there was a hole in the wall, they had to get the plaster and fix it because the landlord did not want to do it. When capital expenditure has to be done on these minor repairs, you tell me it is not because of neglect. I tell you you are wrong.

In the same apartment I referred to earlier there was a window. In that window it started out to be a small leak at that time, but the whole frame of the window is now ready to fall out completely. We are talking about the seventh floor, we are talking about three children in the apartment and this landlord does not want to do anything. It started out to be a small leak. Now they have to repair the whole side of the building because of neglect.

I am not going to stand for that sort of thing and I am glad we have referred to this the way we have. I am hoping the attitude down at the offices that deal with this will change considerably, because the attitude that existed before under the Liberal rent review certainly was not that great. Thank you.

**The Chair:** Thank you, Mr Mammoliti. Mr Turnbull, then Mr Owens, Ms Poole and Mr Wood.

**Mr Turnbull:** I would not want to add anything to that rant.

**The Chair:** Fine, then we will move on to Mr Owens.

**Mr Owens:** Thank you, Mr Chair. I am not sure I could be as eloquent as my colleague.

**Ms Poole:** Oh my God, Steve.

**Mrs Marland:** Let's put it this way: We are quite sure you could be more eloquent.

**Mr Morrow:** Come on, that is not very nice.

**Mrs Marland:** I have listened to both of them.



1030

**Mr Owens:** I suppose it is not surprising that the Housing critic for the official opposition is not familiar with the term "neglect." The tests that might be employed around that, in terms of gathering evidence during our consultations, have determined that "neglect" is a very real word for tenants and in fact is a provable entity. The thing that does surprise me, however, is the less than whole-hearted support for the system that the Housing critic's government set up and for the people employed in that system. I find it to be very surprising that the Housing critic feels these individuals would not be able to go out.

I think that during the hearings prior to the Christmas break on a similar issue, the member for Mississauga South made a comment or provided some anecdotal evidence around a balcony where a tenant rents and goes out and finds the railing wobbly, rust at the base of the railing, and questions whether that is neglect or is a necessity to repair. I suggest that not only the rent review officers who are currently employed by the ministry, but also tenants understand what neglect is. Neglect is not a nebulous phrase that was dreamed up by some fuzzy-headed bureaucrat. Neglect is real and it is there. I suggest that it is provable, and is provable in legal forums.

**Ms Poole:** I will deal with Mr Owens's comments first, since Mr Mammoliti has not come back yet and it would probably be better if he was here when I made my rebuttal. First of all, Mr Owens has said the Liberal Housing critic is not familiar with neglect. Perhaps I could point out to him that I represent the tenants of my riding, 45,000 of them, and they re-elected me in overwhelming numbers because I am working with their problems on a daily basis. I do know what neglect is.

**Mr Owens:** You said that neglect was not a provable—

**Ms Poole:** But unfortunately you were not here—

**The Chair:** Through the Chair.

**Ms Poole:** Unfortunately, Mr Chair, Mr Owens was not here when we were discussing neglect prior to Christmas.

**Mr Owens:** I was, actually.

**Ms Poole:** You were not here for the full time, because if you were—

**The Chair:** Through the Chair.

**Ms Poole:** Mr Chair, excuse me for not going through you. Of course I want to do that. If Mr Owens had been here, what he would have realized is that I have no objection whatsoever to having neglect in this legislation. In fact, I wholeheartedly support it.

**Mr Owens:** I was here the last day—

**Ms Poole:** Mr Owens, please. What we were talking about at that time was the fact that I wanted a neglect section, but I wanted it defined and I wanted criteria attached. I did not want a rigid breakdown saying it has to be this, this and this, but some guidelines for the rent review officers so that tenants know what the criteria are, so that landlords know and so that people know what they are operating under, and so that it would be easy to prove because all they would have to do is meet the qualifications of

the act. That is what I suggested, and I suggested it either be put in the legislation—

**Mr Owens:** So you have issues that perhaps are outside the—

**Ms Poole:** Mr Chair, what Mr Owens does not understand about what we have been debating yesterday and today with the matter of neglect is the problem I have with neglect, again, not defined, but changing the test after the fact, retroactively, and making revisionist history. This government may like to do things retroactively. I do not think it is right.

We also heard from the policy director of the government yesterday that under the old system, ongoing deliberate neglect was unable to be proved, so the criteria have changed.

**Mr Owens:** Because it is difficult to prove intent. We are talking about neglect; we are not talking about deliberate neglect.

**The Chair:** You have had your opportunity, Mr Owens. You can have another opportunity. I will put you on the list if you request it, but it would be much easier if I could listen to one member at a time.

**Ms Poole:** Thank you, Mr Chair. The point is not whether tenants understand neglect—tenants certainly understand neglect—but the important thing is that tenants also have to be able to prove neglect, and to prove neglect they need guidelines and criteria so they know what they have to do to build their case and take it to court.

I have gone around with tenants. I have taken pictures under the old legislation. I have gone to their appeals. I know the difficulty of trying to prove neglect when it is not the right definition and when it is not defined appropriately. That is the problem Mr Owens is neglecting to understand.

As far as the Residential Rent Regulation Act is concerned, which both Mr Owens and Mr Mammoliti refer to with great contempt, there were some problems with the RRR. If you know anything about my history in government, you know I was the first one on the line to point out to the government the shortfalls in the RRR. Any piece of legislation that comprehensive is going to have difficult things that need to be adjusted, amended and changed.

But I can tell you that a substantial amount of the RRR has been repeated in Bill 121. They are tenants' rights and tenants' protections, and they have been repeated in this bill because those rights and protections were good under the RRR. It is the old NDP cause: They throw the baby out with the bathwater. For political hay, they will say that all of the RRR was wrong because the Liberals brought it in, and that because Bill 121 is a piece of NDP legislation, it is all perfect.

Well, I am sorry. Contrary to what Mr Mammoliti said, my right—in fact my duty—as an opposition member is not only to look at the legislation; it is to criticize parts of the legislation that I do not believe are right, and it is also to attack parts of the legislation that I think are wrong.

As far as Mr Mammoliti's comments go, I think he has a basic misunderstanding about the job of the opposition. The opposition are the watchdogs. They are the ones who



are supposed to point out difficulties with the legislation, and that is exactly what we are doing here today. Mr Mammoliti simply does not seem to understand what we have referred to in this section and our difficulty with it. He thinks that some magic change of attitude is going to happen, but it is more than attitude. You have to have extremely well-trained rent officers, you have to have people who are well qualified, but you also have to give them criteria to work with. That is one of the problems, that there are no criteria attached to neglect, and not only that. In this particular section, you are going to change the terms of reference.

I just say to the members of the NDP that if they want to attack me personally, that is certainly their right; perhaps not their duty but certainly their right. I have no problem with that. I am quite able to defend myself. But I can tell you that I have been in those buildings and I know the ones where there is neglect and I would like to see that problem dealt with. I just do not think you are going about it the right way. Give us some criteria.

**The Chair:** The minister would like to participate in the debate at this point.

**Hon Ms Gigantes:** Ms Poole, do you know of cases of neglect that would fall under this section?

**Ms Poole:** Where there are buildings caught under the Bill 4 freeze? Where they have been neglected or they have not been?

**Hon Ms Gigantes:** Where they have been. You might find this clause very useful to your tenants if that is the case and if you have photos.

**Ms Poole:** The ones I have photos for have already been to appeal. They were dealt with from the period 1987-90, so they would not be instances where they are caught under the bill for a freeze.

1040

**Hon Ms Gigantes:** You may find nevertheless that some tenants will come forward to whom this particular clause would have great meaning.

**Ms Poole:** Perhaps I could ask the minister—I think it is a crucial part of it because you have chosen not to define “neglect,” or even if you did not wish to give a rigid definition of “neglect”—to at least provide some criteria for the rent review officers. When I asked whether it would be in the regulations, certainly the sense I got in November and December when we discussed it was that there would not be criteria in the regulations as well.

**Hon Ms Gigantes:** That is correct.

**Ms Poole:** There are not going to be any criteria and there will not be a definition, so it will be up to the individual rent officer to determine whether there is or is not neglect.

**Hon Ms Gigantes:** Mr Chair, I did not wish to engage in debate on this. I just wished to ask whether the member knew of cases where this clause might be applicable.

**Mr White:** I would like to enter into this discussion. I certainly would not want to engage Ms Poole on a personal level; I do not think that is appropriate. But on the issue she brings up, the definition used in the past of

ongoing, deliberate and intentional neglect really qualifies the nature of neglect to something that is very, very difficult of course to read. How does one know that a landlord, or the steward or custodian of a building, is deliberate in neglecting some facet of it? How does one know whether the railings on the balcony were deliberately not painted so that greater capital costs would be brought on later?

The issue of neglect is therefore defined with intent. I believe that neglect is something we are all familiar with, that we all know what it is. To define it in that kind of narrow way really does limit things. I think a landlord who is responsible in looking after his building, or the custodian of that building, obviously wants to look after that building in an appropriate way. Where through absence of that care the building falls into disrepair and requires capital expenditure, it really has to be defined that this is a sense of neglect. Whether it is intentional or not is really irrelevant; the tenants suffer the consequences. I believe the whole issue of neglect of maintenance is going to be a crucial one over the next decade when most of the building stock is older.

The simple folk wisdom, the husbandry, the stewardship issues come to the fore, I think. On the issue of the definition of “neglect,” I would certainly agree with Ms Poole that it would be helpful to have those things defined, but the way in which they were defined in the past turned out to be not at all helpful, because they could not be used when they were so narrowly defined in a constricted way in terms of intent.

**The Chair:** Mr Owens, I would remind you before you start that we are discussing subsection 16(2), which involves a transition section of the bill. Maybe we could keep our comments on that particular section.

**Mr Owens:** I will try and keep my response germane to the section. Contrary to what Ms Poole indicated, I was not showing contempt for the RRRA, although there are contemptible things about the bill. However, I was not expressing contempt. My comments were directed at Ms Poole's, as I indicated less than wholehearted support for her government's legislation and for the people who are employed to enforce that legislation.

Second, the issue around tenants not being able to prove neglect or having neglect not recognized is not surprising, especially since as far as I know—and perhaps the ministry person can correct me—neglect is not referenced in the previous legislation. How does one prove something that does not exist in law? I do not understand why there is that lack of recognition.

**Mr Harcourt:** There is reference to neglect in the previous legislation. In the Residential Rent Regulation Act, the neglect had to be ongoing and deliberate neglect.

**Ms Harrington:** I hope this discussion about neglect will be helpful because it is touched on in other sections of the act. Hopefully, we have something accomplished here with regard to our understanding of that particular issue.

I want to bring everyone's focus back to section 16, and in particular to subsection 16(2), which we are doing. We are dealing with the transitional provisions in the act. When we started this discussion, I believe Ms Poole was



focusing in on the retroactivity, that such a thing was bad. The whole idea we have to clarify is that we are going back to a transition period. I cannot understand why the opposition does not understand that.

We are trying to do a fair deal with expenditures that have been made. Obviously, for tenants this is going to be in the order of a resulting 9% increase. The question is, how could the opposition believe that tenants should pay for these transition improvements if they were a result of neglect of this building? We are saying it is totally unfair that tenants should pay for these transitional improvements that were made in the past if there was neglect of the building.

The point of the definition we were getting to at the end of the session yesterday was that in the previous act, which we have mentioned, it stated "ongoing and deliberate." That could not be proved. The tenant would say to the landlord, "This is not done." The landlord could then say, "I didn't deliberately set out not to fulfil this maintenance." I cannot see why they would not agree that taking that out and putting "neglect" would certainly improve the situation.

I cannot understand why they would have an argument with retroactivity, because what we are dealing with is a period in the past, which by definition is clearly going back. I cannot understand why they would think that these tenants, who are paying above the guideline to the landlords for these improvements, should not have a provision in there that they not pay for neglect. It just seems simple and logical and I cannot understand why people would argue against that.

**Mrs Marland:** I think the point that is being missed here is that we would not be arguing against it if there was a definition for it. It is that simple. As my colleague the member for York Mills just explained to me, the only right for appeal anywhere in this legislation depends on facts based in law.

**Mr Owens:** That is why you cannot prove intent.

**Mrs Marland:** When you talk about neglect and you do not even have a range of definition—even if you wanted to say that neglect could be between here and here, then there are some parameters. What you are doing is saying you are not willing to define it because it is going to depend on the rent officer's interpretation. You are saying it is going to depend on evidence before the rent officer when he interprets the case. You are going to have two sides of evidence.

Minister, happy new year and welcome. We missed you yesterday in one way. Your parliamentary assistant did a very excellent, capable job in answering the questions from the minister's perspective. I think you should know she did an excellent job. I did not agree with very much of it, but she did do an excellent job.

1050

One of the things that came up yesterday and that we were talking about was why landlords should be prohibited from having the opportunity of applying for an increase they may not have chosen to apply for. In terms of retroactivity, we were talking about the month and the year this

bill would be effective from. Ms Parrish was explaining that the reason you cannot go back is that nobody would have accurate records.

When will we be able to get Hansard from yesterday?

**Clerk of the Committee:** I will check with Hansard and find out for you.

**Mrs Marland:** Ms Parrish was explaining that you cannot give the landlords the opportunity retroactively to apply for an increase they might have chosen not to apply for at the time, because the tenants would not have their records and would not have their evidence—that was the reason—and it would not be fair to the tenants because tenants move in and out and may not have passed on the story; the history of what the conditions had been may not be available.

I found it tremendously interesting to use that argument, on the one side, as it was used in the example I have just given you, and yet here when we are talking about neglect under subsection 16(2), because there is no definition of "neglect" you are now going to say the tenants will have the evidence and it will be acceptable. Perhaps the minister can tell us how under subsection 16(2) the residents will have gathered their evidence to prove "neglect," for which she has no definition.

**Hon Ms Gigantes:** Mr Chair, do you wish me to respond now or to wait, or what would you like?

**The Chair:** If Mrs Marland would like a response and you wish to respond, then that suits me.

**Hon Ms Gigantes:** There may be easy ways for tenants to do that. There may, in cases that are applicable under this section, be work orders, for example, and evidence of work orders. If that is the case, it is fairly easy to bring forward the evidence for the period that is involved. There may be letters to the landlord. There may be any kind of evidence. There may be calls to the rent review office. There may have been meetings of tenants. There may be minutes of those meetings. There are any number of ways this section might be useful to tenants at this stage.

Let me reiterate what has been indicated before. This section really provides a way for landlords to make an application for a previous period. All we are saying in this part of this section is that if landlords take advantage of this section of the act to make an application for the previous period, then it shall be open to tenants, as it would be in the main body of this legislation, to bring forward evidence to the rent officer that the capital expenditures were generated by neglect.

That is all we are doing. We are applying the same principle to that section of the bill which permits landlords to go back to the previous period and apply for an above-guideline increase that we apply in the main body of the bill, which is that there shall not be an above-guideline increase where there is evidence of neglect.

**Mrs Marland:** I agree with the minister that it would be easy for the tenants if there were outstanding work orders. That would be very concrete evidence in terms of the work orders being issued by an independent third party. But I think it is relevant to ask the minister some questions about these rent officers who are going to make



decisions under subsection 16(2) in terms of interpreting neglect, since there is no definition of "neglect" in this bill.

**Mr Chairman,** you may recall that I asked the minister for some background on who these rent officers would be, what kind of training they would have and what kind of expertise they needed to apply for the job. I would like to ask the minister some of those questions at this point. I received in response to my questions a package that talked about it. "Position Specification and Class Allocation" is the form, and it is for the position of rent review administrator. Do I assume correctly that rent review administrator is the same as rent officer?

**Hon Ms Gigantes:** That will be the case once the new legislation comes into effect. Am I right? I hope so.

**Mr Harcourt:** Generally, there will be competitions for the position. Certainly, the specifications for the position of rent officer have not been developed. In fact, they are being developed right now. There will be competitions when these positions do become available, and the qualifications will undoubtedly vary somewhat from what is in the administrative position.

**Mrs Marland:** This is great. We do not have a job description yet then?

**Mr Harcourt:** A job description has not been completed at this date, no.

**Mrs Marland:** Then this is useless. This does not answer the questions I asked.

**Mr Harcourt:** Many of the qualifications are the same, but there will be some that are different; that is correct.

**Mrs Marland:** I think, Minister, with respect—what date was this bill tabled?

**Hon Ms Gigantes:** June 6, I am told.

**Mrs Marland:** We are now at January 14, so we have had this bill for seven months that has talked about rent officers, and your ministry has not yet developed a job description or a position specification for those applicants. Am I correct, from the answer we just had?

**Hon Ms Gigantes:** I believe the member heard the answer from Mr Harcourt, and at the rate this discussion is going, we might be very much ahead of ourselves to have job descriptions any time in the next few months.

**Mrs Marland:** That is a pretty shoddy reply. This whole bill pivots on rent officers, and you have not yet decided who a rent officer will be. You have not yet decided what their job specification is or what their entitlement and eligibility to apply for that job will have to be.

1100

**Hon Ms Gigantes:** Mr Chair, with respect—

**Mrs Marland:** Excuse me; I have not finished.

When I asked the question, and I asked the question, according to my notes, about the second or third week in November, I received this response from you—oh, that is right, I forgot; it was an undated letter. Anyway, your undated letter was tabled with this committee around December 5. What you are telling me is that there is no point—I have spent some time, by the way, considering

this package of material because I understood this applied to the rent officers. Now that I start to question about the relevance of this material to rent officers, Mr Harcourt tells me that some of it may apply but you actually have not made the decisions yet on who a rent officer will be.

**Hon Ms Gigantes:** Was that asking for a comment? Is that the question?

**Mrs Marland:** What was the point in furnishing this material is the question.

**Hon Ms Gigantes:** If you step back from this very intense discussion of the specifics of the job specs for a rent officer, I think it very reasonable in a bill such as this one, which will be in the main implemented through the work of rent officers, that we should not define every jot of the job description until we get a very good sense of what the rent officers are going to be doing. We are at section 16 now, so we are making progress in defining what the framework of this legislation is going to be, but it is slow progress.

We have explained to the member that most if not all of the requirements for eligibility as a rent officer will be a repetition of those skills and experience that have been required of the people who have served as rent review administrators under the current legislation, Bill 51. Given the fact that many of these individuals have had a lot of experience with the operation of a rent review system and a fair understanding of the field in which they would be called upon to work under Bill 121, the personnel involved will on the whole be the same.

It certainly is the intent of the Ministry of Housing to make sure that people who are members of the staff of the ministry are not thrown out of work without a thought given to their previous skills or experience, without a thought given to whatever new training they may need to implement new legislation and take on a new job title and new responsibilities under that title. I very much hope that people who have been employed by the Ministry of Housing as rent review administrators under the job description they have will seek and be successful in application to become rent officers. I think as a group they are probably the most experienced and skilled group we could find in this province.

There is nothing devious, nothing hidden, nothing out of the ordinary, nothing inexplicable, nothing outrageous, nothing abnormal. This is in fact quite a usual, practical, step-by-step, ordinary process of looking to a piece of legislation, understanding from that legislation what the roles of the people called upon to implement it should be, describing those roles once the legislation is fully approved, making sure all elements of their duties will be within their job description and then proceeding to look for people who have that kind of skill and experience. I expect they are going to be, in very large measure, the same people who have worked with the Ministry of Housing, sometimes under very frustrating and difficult circumstances, given the legislation they have had to implement, over some period of time.

**Mrs Marland:** I am not going to respond to the minister's ongoing sarcasm because I am not going to be



drawn down into that. The public does a very good job of interpreting her answers and her style of dealing with my questions. We have received a lot of comment about her sarcasm.

**The Chair:** Perhaps we could discuss section 16.

**Mrs Marland:** The minister says in response, "this intense discussion of job specifications for rent officers." It is on our part a very serious discussion of who these rent officers will be, because based on the decisions of these rent officers with a wide-open bill that has no definition for neglect and no guidelines for those rent officers to execute their duties—I now learn, in response to my question about rent officers, that we have a job description that is not a job description for rent officers. Naturally we are concerned about who these rent officers will be.

In fairness to the tenants who are going to appeal under the basis of legality for appeals in this legislation, a rent officer is going to make the decision and there is no appeal of that rent officer's decision. For the property owner that rent officer may or may not grant, under subsection 16(2), which is before us at this moment, eligibility for a capital expenditure. We are talking about millions of dollars in this province when we are talking about capital expenditures to property in which tenants reside.

If we think we can treat this subject so lightly when the future of rental accommodation in this province pivots on who that rent officer is—if that rent officer does not grant something that is a legitimate, eligible capital expenditure, then the work may not be funded at all. There are so many questions to which this minister does not have the answers as we go through this bill.

She is perfectly right, we are only at section 16. The reason we are only at section 16 is because already, up to section 16, we have had any number of amendments. I have not counted how many amendments there are in section 16. I could go through and count all the little black arrows.

**The Chair:** Maybe we could discuss section 16.

**Mrs Marland:** I am discussing section 16. Up to section 16 we have had a number of amendments from the government; we have also had a number of amendments from the two opposition parties. But the reason it has taken so long to get this far, I suggest, is not because the bill is flawless; it is because the bill is being amended continually by the government. It is their own bill and today they brought in a whole new set of amendments.

1110

**Mr Morrow:** On a point of order, Mr Chairman: It is really nice that you have a government over here that is really trying and putting amendments forward and all that, but can we please get back to the section we are dealing with?

**Hon Ms Gigantes:** There are no amendments in this section.

**Mrs Marland:** I am sorry, there is an amendment in section 16.

**Hon Ms Gigantes:** But on the subsection we are discussing, we have had a discussion of at least an hour, and it is not amended.

**The Chair:** Order. We are discussing subsection 16(2).

**Mrs Marland:** The minister said there is no amendment in this section. She is wrong. There is no amendment in 16(2), which is a subsection. I am talking about 16(2) as a subsection. In fact, part of the concern we have is relevant to section 16.

**Mr Mammoliti:** On a point of order, Mr Chair: We are on subsection 16(2)?

**The Chair:** We are on subsection 16(2).

**Mr Mammoliti:** Could you ask the clerk whether there are any amendments to 16(2)?

**The Chair:** There are no amendments to subsection 16(2). Is that a point of order?

**Mrs Marland:** It is wonderful how the trained seals react when you make a point. It was the minister who raised how much time it was taking to get through this bill. It was not me who raised it, the minister raised it. I am simply saying that as the minister raised how long it is taking to get through this bill, it is fair for me to respond to the minister.

The reason it is taking so long to get through this bill is that we have already had a substantial number of amendments by the minister and some amendments by both opposition parties. All of the amendments, I would suggest, pivot around who the rent officer is and what that rent officer's decision will be.

I have a perfect right, on behalf of the tenants and landlords in this province, to find out who the rent officers are and what kind of qualifications they are going to have, and I intend under subsection 16(2) to proceed with my questions. The minister has said that in all likelihood many of the current rent review administrators will become rent officers. Dealing with that answer, because she said she wants to protect their jobs, I would like to ask where in the rent review administrators' job training is there a direction or training session that deals with the interpretation of neglect?

**Hon Ms Gigantes:** There will be training sessions for those people hired as rent officers. They will include the skills required to implement the whole bill.

**Mrs Marland:** There will be training sessions. Could you tell us what those training sessions will involve in order that they can interpret the result of neglect as under subsection 16(2)?

**Hon Ms Gigantes:** No, I cannot. First of all, most people in Ontario if asked to define what neglect is would use the same kind of interpretation of neglect as we have seen in common-law court decisions and court decisions under legislation for many decades in this country and in British jurisprudence. I do not think there is going to be an enormous amount of difficulty around this question. In fact, I have not heard any member of the opposition suggest any case that might pose a difficulty for a person with an ordinary understanding of the rental field to make a decision of neglect. As has been pointed out many times,

there is a descending order of evidence, and the member has agreed that perhaps the easiest kind of evidence for a rent officer to use will be work orders, descending in terms of—what can I say?—legality.

There are many kinds of evidence which can be brought forward by tenants and it will be up to rent officers to make a decision whether the evidence brought forward indicates neglect, which is a term commonly used on the streets and in the workplaces of this province and has been for centuries. It is also used in our courts. I do not think it is going to be a difficult matter to apply to the rental situation under the rules we are setting out in this legislation.

**Mrs Marland:** If this minister is not willing to give a job description for the rent officer or a definition of neglect, I think we really cannot deal with subsection 16(2). I am going to move that we stand down subsection 16(2) until we have a definition of neglect and a job description for rent officers who are going to interpret this section of the bill.

**The Chair:** Do we have unanimous consent to stand down subsection 16(2)?

**Interjection:** Absolutely not.

**The Chair:** We do not have unanimous consent to stand it down, Mrs Marland.

Interjections.

**The Chair:** One at a time. Mrs Marland.

**Mrs Marland:** Mr Chairman, Mr White said, "The trained seals said no." I guess that was predictable. That is because I suspect they do not want to agree to having a job description for the rent officer or a definition of neglect because they want to perhaps—

**Mr White:** On a point of order, Mr Chairman.

**Mrs Marland:** I am in the middle of a sentence.

**The Chair:** A point of order comes first.

**Mr White:** Thank you, Mr Chair. Two items: First, I indicated that the trained seals were saying yes, not no. Second, the request has already been denied, so it seems Mrs Marland is going back over ground that required unanimous consent. She does not have it, so she should move back to a discussion of subsection 16(2).

**The Chair:** Mr Owens, a point of order?

**Mr Owens:** No, just to put my name on the list.

**The Chair:** Mrs Marland, I am sure, will be discussing subsection 16(2) directly.

**Mrs Marland:** Mr White is really entertaining. He said the trained seals said yes. If you had said yes, I would have had unanimous consent, so you are slightly confused.

**The Chair:** We are discussing subsection 16(2), Mrs Marland.

**Mrs Marland:** Well, he is a little confused. Mr Chairman, could I ask you something? If the government members had said yes, would I not have unanimous consent?

**The Chair:** Just continue with your discussion of subsection 16(2), please.

**Mrs Marland:** I would have had unanimous consent. It is unfortunate that Mr White is so confused. If he would concentrate a little he would know whether he said yes or no. I was asking for yes; I wish in fact you had said yes.

Under "rent officers" in this package I received there is a section which says "procedural training, RCA." Could you tell me what that means?

**Hon Ms Gigantes:** It will be training that relates to the procedures under this legislation.

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**Mrs Marland:** What does RCA mean?

**Hon Ms Gigantes:** Rent Control Act. Actually, I still am not used to the acronym and when the question was asked, my thought was RCA Victor. I actually turned and asked, "What is RCA?" We share that problem.

**Mrs Marland:** I do not assume an acronym's interpretation any more. You always have to ask what it applies to.

**Hon Ms Gigantes:** I certainly did.

**Ms Poole:** On a point of order, Mr Chair: If the members of the government were laughing at Mrs Marland because she did not understand, were they also laughing at the minister?

**Hon Ms Gigantes:** Yes.

**Ms Poole:** But they would not have if they had known, right?

**Hon Ms Gigantes:** I cannot guarantee that.

**Mrs Marland:** Under this section it lists extensions of time, directions, file review techniques, evaluating submissions, determining validity of notices of rent increase, complete applications, file management and workload assessment. Could you tell me which of those, if any, apply to the rent officer who will be interpreting subsection 16(2)?

**Hon Ms Gigantes:** Mr Chairman, I wonder if I can make an offer to you, that when we get to a section of this bill which actually deals specifically with rent officers—and I will take advice on which might be the most appropriate section—we could prepare to have somebody from human resources in the Ministry of Housing come here and do a level-best job of answering the very detailed questions which interest the member. Would that be helpful? It is certainly not helping her, in my view, or elucidating matters to anybody else at this stage for me to attempt to answer these questions. It is a level of detail that I think we should call upon special help for. I do not want to stand down the section.

I will make her this offer, that if we get to the major section, part IV, which deals more generally with the implementation of the act, and we have a major problem where we all get convinced that we have to have a change around the duties of the rent officers and, as a result of that, subsection 16(2) might have to be amended, I will certainly consider coming back and doing that. But I would just like to get subsection 16(2) under our belts. I will make her that offer, that we come back with people who spend their working days devoting their efforts to making sure the people who work on the implementation of the legislation for rent control are going to be well



trained and well aware of the elements of the bill and prepared to do a good job on behalf of the people of Ontario.

**Mrs Marland:** I understand the minister does not have the answer to any of my questions on these rent officers, but subsection 16(2) refers to rent officers. If we want to defer the questions until the minister can have her staff here to answer—

**Hon Ms Gigantes:** That was not the offer I made. The offer I made was that when we get to the substantive section of the bill that deals with the implementation of the legislation, I would be quite prepared then to give notice to the human resources people in the ministry, who are most knowledgeable in this area and who are indeed working on the development both of the job descriptions—as we move along to describe what is in the job legislatively, I hope—and also the training process. Otherwise, I would simply like to dispose of subsection 16(2). Where we simply are not in a position to be able to call people forward, I think it is a waste of everyone's time at this stage.

**Mrs Marland:** I agree that my questions about who the rent officer will be in terms of the job description and job qualifications is a waste of time, but what I think is deplorable is that this bill has been in this House now for seven months and you do not have those answers. That is the part that is totally unacceptable to us and totally unacceptable to the public, that we have a piece of legislation that refers all the way through to "rent officers."

You are saying now that you would be happy to answer my questions where we deal with rent officers. I respectfully suggest that there is a hardly a clause—if there is one; I am not familiar with any clause or any section—in this bill that does not require a rent officer to interpret it or enact it. If you are saying, seven months after the bill has been tabled, that you do not have the answers to my questions today and that you want to defer my questions until you have a staff person, that is fine with me, but I am saying that we cannot vote on these clauses where it specifically says "rent officer" until we know who that person is and if he or she is qualified based on a program that is yet to be developed by your ministry.

Could you tell me which section of the bill you would be prepared to have staff here to answer my questions?

**Hon Ms Gigantes:** Part IV; it is section 116.

**Mrs Marland:** "The director shall appoint rent officers for the purposes of this act."

**Hon Ms Gigantes:** Yes, and if you also look at section 117, it would cover some of the areas that would be of interest to you concerning the powers of the rent officers. Those two sections I would propose as the most appropriate, Mr Chair. I am going to stress again that it will be very helpful to us in the ministry to have shape to this legislation, in other words, to have gone through it and incorporated amendments, before we set up the training program, for example. It is hard to tell what to train people to do when you do not know what they are going to be doing yet.

**Mrs Marland:** Mr Chairman—

**The Chair:** Mrs Marland, just one moment. It is certainly not up to the Chair to decide how the committee

proceeds, but in the tradition of this place, we have tried to go through bills in a logical and orderly fashion and decide questions once and for all rather than revisiting them constantly.

It seems to me that the minister is making a suggestion that would perhaps be helpful to the committee in coming to a conclusion on this particular issue, which members feel is very important, and then we can proceed with the bill as we see fit. That is just a suggestion. I leave it to you.

**Mrs Marland:** Thank you, Mr Chairman. I think we are getting into an area of gamesmanship here. When the minister says she would like to know the direction the bill is going, and there are six government members and five opposition members who vote on this committee, and we have not had any support for any opposition amendment from the government so far, and we know perfectly well that the minister wished to present her bill—

**Mr White:** On a point of order, Mr Chair: Could we return to the section under question, please, subsection 16(2)?

**Mrs Marland:** Mr Chairman, it is unfortunate that Mr White does not know that I am responding to the minister at this point. The minister has made a suggestion, Mr White, and maybe you were not able to understand it. The minister's suggestion is based on the direction of this bill. I am suggesting that given the voting power of the government members on this committee, there will not be any changes to this bill that this minister does not want. The fact that the minister is saying, "I don't have the job description and I don't have the job qualifications for these rent officers, because I don't know what the bill is going to say," is just a pure game.

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**Mr White:** On a point of order, Mr Chair: First off, the question is not my comprehension or ability to comprehend; that is something which was determined long ago. However, the issue at hand is 16(2). Following the member's request, the minister very graciously suggested opening up at a later point in our discussion. I do not believe the member has accepted that suggestion, nor the Chair's suggestion of that same entrée. We are therefore back at 16(2) and I think we should confine our debate to that, as otherwise it will make no sense to the members present and have no reference to section 16(2).

**Mrs Marland:** Mr Chairman, 16(2) refers to rent officers.

**The Chair:** Correct.

**Mrs Marland:** And my questions have been about rent officers. Do you agree that my questions have been in order, Mr Chairman?

**The Chair:** Just continue, Mrs Marland.

**Mrs Marland:** Thank you. I am not willing to vote on subsection 16(2) without the questions I am asking about rent officers being dealt with. If the minister can have her staff here this afternoon or tomorrow to answer my questions, I think we could stand down subsection 16(2) for 24 hours. I am asking the minister if she would do that for 24 hours.



**Hon Ms Gigantes:** The answer is no. I have indicated to the member that I have no intention of standing down 16(2)—none.

**Mrs Marland:** Maybe the minister could tell me, then, why this committee was stood down for two whole months before we started these hearings if now 24 hours is so important. This committee did not meet for two whole months because the government chose not to have the meetings. I am talking about the end of August, September and October, before we started the hearings. Even when the House came back this committee did not meet to deal with this bill, because the government—

**Mr Owens:** On a point of order, Mr Chair: The member is most aware it is not the minister who sets the committee schedule but the whips and the House leaders from all three parties.

**The Chair:** That is not a point of order, but a good point of information.

**Mrs Marland:** Is it not true that the government House leader takes, perhaps, direction from his ministers as to which legislation they would like to have a committee dealing with? Week by week, these committee meetings were cancelled. Every week we received a notice that the committee would not sit because the government was not ready to deal with this bill.

I am asking for a 24-hour deferral of this section until we get the answers to my questions and the minister is denying that, although she lost two months when we could have been dealing with the bill. That is autocratic and it is unfounded. My request is very reasonable and I cannot see why 24 hours—it is not as though I have not asked these questions before.

**Hon Ms Gigantes:** That is true.

**Mrs Marland:** I still do not have the answers. I asked these questions in November and December and I did not have the answers. Three months later I am still asking the questions. The minister has now offered to get her staff here. I am simply saying we will deal with this section when her staff are here.

**Hon Ms Gigantes:** You are suggesting.

**Mrs Marland:** I am not prepared to discuss this section if I cannot get the answers to my questions, in fairness to the tenants and property owners in this province, who need to know who a rent officer will be and what qualifications he will have to have in order to do that job, apart from the whole subject of the word “neglect,” for which we have no definition. It is pointless. If we are going to get the answers from the minister’s staff three months after I ask for them, then a 24-hour stand-down of this section is ludicrous. Let’s let the public decide. I thank the clerk for the copy of yesterday’s Hansard.

**Mr Daigeler:** I think it was Ms Harrington who mentioned earlier that she could not understand why the opposition had any problems with the concept of neglect being taken into account in the consideration of capital cost allowances. We do not have any problems with that. I think the problem lies with the power that is being given, through these provisions, to what can be described as

faceless bureaucrats. That is the concern we are trying to get across here, that a lot of people out there are very concerned about big government telling the people what to do without any appeal possibility. We have been trying for some time now to hear from the minister what assurances there are that landlords will also be protected against spur-of-the-moment decisions by the rent officer. If I am informed correctly, there is no appeal possibility at all any more against these decisions.

The question is, who defines “neglect”? Who looks at the interests of the landlord and the interests of the tenant as well? Is it only the officer? Is he or she the big policeperson who makes a decision without any appeal possibilities? I think that is the concern and the fear of the community out there. If I might have her attention for a moment—

**Hon Ms Gigantes:** You have my attention.

**Mr Daigeler:** I would like to hear from the minister whether there is any consideration at all to publicly giving the officers guidance, that can then be used by all the parties concerned, on the definition of “neglect.” I think that is the question.

**Hon Ms Gigantes:** The answer is no, for the reasons I have spoken to before. We have discovered, through the unsuccessful application of those clauses related to neglect in the existing legislation, Bill 51, that when you try to define “neglect,” you end up limiting its applicability as a useful term within the bill. I do not think, and I do not think you think, that it is difficult to decide whether neglect has occurred.

**Mr Daigeler:** Yes, I do.

**Hon Ms Gigantes:** Can you give me an example of where you think a case of doubt might arise?

**Mr Daigeler:** Listen, what may be neglect to me may not be neglect to someone else at all.

**Hon Ms Gigantes:** Give me an example of what is not neglect which you think might be contentious.

**Mr Daigeler:** I heard what you said. You said you would not give any guidance, okay? That is the answer I was seeking and that is fair; that is your position. Can I ask you another question? Are you considering any appeal option at all to that decision of neglect by the officer?

**Hon Ms Gigantes:** The process for any reconsideration of any section of this bill will be the same, and it will apply to subsection 16(2) as well.

**Mr Daigeler:** And that is?

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**Hon Ms Gigantes:** If we move to amendment, as we are proposing, if there were a decision by the director of the rent office that a case should be reheard, then it could be reheard. That is an amendment we are putting forward which I would certainly be happy to discuss when it comes up.

**Mr Daigeler:** Frankly, that does not sound very reassuring to me in terms of an appeal avenue. I could possibly be satisfied to leave “neglect” totally open if there were a reasonable appeal option for both parties, but I am not hearing this at all.



**Hon Ms Gigantes:** The appeal mechanism or process will be the same for both parties.

**Mr Daigeler:** Yes, but I am not clear at all on what that process is.

**Hon Ms Gigantes:** This is not the section of the bill that deals with that.

**Mr Daigeler:** I know, but I certainly am not very clear on the description you just gave me, at least as yet. At this point I will pass it and perhaps hear more about what that appeal option is.

**Hon Ms Gigantes:** I think we have made it as clear as we can to members of the committee, the Legislature and indeed the public that it is our view that to have the same kind of arm's-length and complex appeal mechanism that we had in Bill 51, which is apparently what people who are looking for more appeal process within this legislation are asking—it has proved totally intolerable to any person who has to deal with it. We have had such a complex, prolonged, dragged out and unhelpful appeal system, that my strong feeling and that of the government is that we should not entangle people in the same kind of thing again. It is best to have a decision.

People have made it clear to us that certainty is something they consider a prime goal in this legislation, to have a decision. In cases where, for one reason or another, it looks as if there has been some kind of problem with the initial decision, we will provide a provision for a rehearing. Otherwise, it is going to be a case where people will have to go to court. We do not think the mechanism of appeal such as we have seen has been helpful to any party.

**Mr Daigeler:** I think that is quite clear and I appreciate your frankness, but that is precisely what concerns me and other members of the opposition. It is that unrestrained power that is being given to government, but I guess that reflects the approach of your party.

**Ms Poole:** On two occasions now, the minister has challenged the opposition to give examples of a situation where it would not be common understanding whether or not it was neglect. I can give you some examples.

One example is underground parking restoration. In fact, we had confusion on our own committee about it. Last spring, when we were considering Bill 4, Mr Mammoliti made the accusation that underground parking garage rehabilitation was necessary because of neglect by the landlord. We had expert witnesses who came in and told us in no uncertain language and with no doubt whatsoever that it was not neglect by the landlord but the technology at the time the buildings were constructed which allowed for water to seep into the beams and cause a problem with rusting, deterioration and corrosion of the building structure.

**Mr Mammoliti:** On a point of order, Mr Chair: The people in front said there could be neglect by the landlord. She is misleading, I believe.

**Ms Poole:** Mr Chair, I would ask for withdrawal of that comment.

**The Acting Chair (Mr Abel):** I think perhaps, Mr Mammoliti, you could change your wording somewhat to avoid the word "misleading."

**Mr Mammoliti:** Mr Chair, my recollection of the individuals who came in front of the committee back then is that they did not say what Ms Poole claims they said. I will leave it at that.

**The Acting Chair (Mr Abel):** Thank you, Mr Mammoliti. Ms Poole.

**Ms Poole:** Thank you, Mr Chair. I would challenge Mr Mammoliti during the lunch time to look back at Hansard and bring back to us this afternoon or tomorrow morning the quotation where they said it was neglect by the landlord that caused the deterioration with the underground parking garages and not a matter of technology. I am quite firm on that. We had testimony from the Concrete Restoration Association of Ontario and from numerous expert witnesses who said the contrary.

That is one where there is certainly a lot of public misunderstanding—any type of concrete restoration, for that matter. The thing we have to remember about these buildings, particularly the fact that they are aging housing stock, is that many things in a building have a life expectancy. We have a very hard climate here in Canada; we have days when it is freezing and we have days when it is 90 degrees.

**The Acting Chair (Mr Abel):** Is this related to the section under discussion?

**Ms Poole:** It certainly is.

**Mr Owens:** I do not think so. Climatic conditions are not related to subsection 16(2) of this bill.

**The Acting Chair (Mr Abel):** Please continue, Ms Poole.

**Ms Poole:** Perhaps, for Mr Owens's edification, I would tell him why this relates.

**Mr Owens:** My education is not lacking. It is your lack of understanding of the section that—

**Ms Poole:** I said "edification."

**The Acting Chair (Mr Abel):** Order, please. I would ask that all comments be directed to the Chair.

**Ms Poole:** On a point of clarification, Mr Chair: I said "edification." I would not insult Mr Owens's education, because he is certainly an articulate, educated person. I would explain why the climatic conditions do have something to do with it, because that relates definitely to the fact that our buildings expand and contract, that there is difficulty with the concrete because of it, and quite often it affects things such as concrete restoration. When it comes down to it, things like concrete restoration and underground parking rehabilitation are things where, on the surface, somebody may say, "This is crumbling, this is neglect," but in fact, it is not neglect and it cannot be laid at the landlord's door.

There are a number of instances I can cite to you. I had an instance where there was a work order out for replacement of a screen door, where it was out and it was not repaired. There was a work order by the inspector but the fact is that there was vandalism. The screen door had been



replaced about 10 different times on 10 different occasions and the landlord finally said, "I'm not going to replace it because it's a waste of time."

You have instances like that. Obviously that is not a very common one, but the concrete restoration certainly is, the underground parking rehabilitation is another. I agree with Mr White and others who have said that you do not want a rigid, narrow definition; I agree wholeheartedly. That is the last thing I want and that is why it did not work in the RRRRA. It was too rigid and too narrow. But that is not to say there should not be criteria and there should not be guidelines for the rent review officers so that when they are making these decisions they are the right decisions.

Do not forget one other fact, that in this kind of instance, if a rent review officer made a decision that an application was not allowed because of neglect, that would not be appealable, because it is not a matter of law so it could not be taken to the courts; it is a matter of fact. It is an error in judgement, basically, but that is not grounds for appeal.

So you are giving enormous power to this rent review officer to make decisions when he or she may not have all the information he needs to make them. If the minister had said, "In the regulations we're going to have criteria, we're going to have guidelines, we're going to give some assistance"—not something rigid and hard and fast, but guidelines so they would have information to act upon—then I would feel much more comfortable with it. I would not insist on a rigid definition, but to provide no definition, no criteria, no guidelines, and to go ahead and say, "Everybody knows what neglect is"—well, we do not, because we are not experts. I certainly am not an expert in this, but I listened to what people tell me who are experts.

When we were talking about evidence, the minister referred to the fact that there are several ways to get evidence, and one is through work orders. Work orders are not evidence of neglect. Work orders are evidence of the fact that work needs to be done on the building, and there are work orders for underground parking rehabilitation.

Mr Chair, through you to the minister, I would say that there are work orders out there on underground parking rehabilitation programs because it is going to cost \$1 million to do it and the landlord is having difficulty getting the financing to do it. When you have a cap of 3% per year on that and a limit of three years total over which it can be drawn, it is certainly quite conceivable that the landlord could not have it recouped in rents and therefore could not get financing even if he was willing to. So you come down to the situation that work orders are not necessarily evidence. In many cases the minister is right that they can be used, but certainly not in all cases. You cannot say, *de facto*, that because it is a work order it is evidence of neglect.

The second thing she said was, "Call a rent review office and they can give you information." That is not the purpose of a rent review office. I can tell you that I and my office have talked to the rent review office on hundreds of occasions, if not thousands, and that is not the type of information they collect and give out. The type of information they collect and give out is hard, cold facts and

numbers, things that would not be helpful in the least as far as proving a case of neglect.

So it comes down to two difficulties with this section. One is neglect in itself—I think that in section 20 or section 23 neglect rears its ugly head again—and the fact that there are no criteria involved. The second part is that it is going to be difficult going back in time and getting evidence when the test and the rules have changed.

I have difficulty supporting legislation where it is not going to work, where you are going to have tenants and landlords spending a lot of time and effort preparing their cases when they do not know what the basis is going to be and when, if they do not like the decision, they have no route of appeal. That is it in a nutshell. Regardless of whether Mrs Marland gets her information on what rent review officers do or do not do or where they are qualified or are not qualified, on those two criteria alone I could not support this section.

**The Chair:** Thank you, Ms Poole. Mr Turnbull.

**Mr Turnbull:** Through you to the minister, I want to reference her remarks. She said she is against a drawn-out appeal process, but essentially, other than mistakes in law, there is no appeal process to this legislation. I had a long chat yesterday with the president of the Federation of North York Tenants Associations, and he is absolutely outraged at the fact that there is no appeal process. I am sure many landlords feel the same way. Unless you have a definition, there can be no reference to the court of items of law with respect to chronic neglect. The tenants I represent very strongly feel that there should be an appeal process, and in fact we will be bringing in, under sections 87.4 and 90, amendments to reflect the fact that there should be an appeal process.

Specifically, I am rejecting what the minister is saying because the tenants want an appeal process. They may not have been happy with the process that existed under Bill 51, but they feel there should be a normal appeal process, as there is in all matters of law.

**Hon Ms Gigantes:** Without getting into debate, I suggest that the amendment we are bringing forward to subsection 89(1) is one that members might like to look at. It deals with the process of reconsideration of a decision. It may not satisfy members, but it is substantial enough, I believe, that members here can no longer say with accuracy that we are making no provision for appeal.

**Mr Turnbull:** I will consider that. This is one of those pages that I can hardly read, but I sort of get the gist of it. I want to consider that, but I wanted to point out that tenants were not happy with that.

**Hon Ms Gigantes:** On a point of order, Mr Chair: I may not have the same quality of copy as individual members, so if there is difficulty on any of these amendments, we would be more than happy to replace the copy.

**Mr Turnbull:** I presume after lunch we will be getting new copies.

**Hon Ms Gigantes:** I am told we are getting a whole new package after lunch. Our apologies.

**The Chair:** That would be appreciated.



**Mr Turnbull:** I will obviously have to consider that and discuss it with the tenants to see if they are satisfied with that. But you used the expression "British jurisprudence." The root of British jurisprudence is the fact that you have a right to go to the courts on any matter with respect to legislation. It is basic. To a great extent you have pulled the carpet out from underneath people's feet on this, so your waving British jurisprudence before us is something of a red herring.

**Hon Ms Gigantes:** I have nothing further.

**The Chair:** Do you wish to continue, Mr Turnbull?

**Mr Turnbull:** I am going to consider this amendment and then I will refer back to it at the appropriate time. Unfortunately, I will probably not be here in committee when we study that section.

**The Chair:** Thank you, Mr Turnbull. It being 12 o'clock, we have one member who has indicated

he wishes to speak on that, Mr Owens, and we can pick that up at 2 o'clock.

**Mr Owens:** I will keep my comments short.

**Mrs Marland:** On a point of order, Mr Chair: We have a subcommittee meeting at noon. If we are going to do the subcommittee meeting and continue now, those of us who have to sit on the subcommittee really are going to be out of time.

**Mr Owens:** I can certainly wait until after lunch.

**The Chair:** That is what I was actually suggesting, Mr Owens.

**Mr Owens:** That is fine.

**The Chair:** We will reconvene at 2 o'clock, and as Mrs Marland mentioned, there will be a subcommittee meeting immediately. The committee is adjourned.

The committee recessed at 1159

## AFTERNOON SITTING

The committee resumed at 1412.

**The Chair:** The standing committee on general government will come to order. Mrs Marland.

**Mrs Marland:** Mr Chairman, I called in at the Speaker's office a few moments ago on the way to this meeting to find out what the Speaker was doing with regard to staff in the Legislative Assembly building in light of the increasingly difficult weather outside. I understand from speaking to the Speaker that he has given permission for his staff to leave the building today at 3. I suggest that in fairness to the staff associated with this committee, the Hansard staff, the clerk's staff and the Ministry of Housing staff, we give our staff the same consideration because of the severity of the snowstorm.

**The Chair:** Do other members have any comments on Mrs Marland's suggestion?

**Mr Owens:** We should include legislative counsel as well.

**Mrs Marland:** I did intend to include everyone.

**Mr Owens:** That is a good suggestion. In fairness to the staff, as well as for their safety concerns, I think 3 o'clock is a good time to break.

**The Chair:** Do I have unanimous consent to adjourn at 3 o'clock?

Agreed to.

**The Chair:** Back to the business at hand: We are dealing with subsection 16(2). Mr Owens has the floor.

**Mr Owens:** In the interest of brevity I will borrow a phrase from your caucus colleague Elinor Caplan and not tease the bears. I will yield my time to the next speaker.

**Mrs Marland:** That is Floyd's phrase.

**The Chair:** Thank you very much. The present Treasurer invented that phrase. Shall subsection 16(2) carry?

**Mrs Marland:** Recorded vote.

**The Chair:** Mrs Marland has requested a recorded vote. All those in favour?

**Mrs Marland:** Mr Chairman—

**The Chair:** All those in favour?

**Mrs Marland:** Excuse me.

**Hon Ms Gigantes:** The vote has been called.

**The Chair:** We will proceed with the vote. We have a recorded vote requested.

**Mrs Marland:** I was going to ask that I have five minutes to get Mr Turnbull, but if we are going to continue the games, I guess I will not get five minutes.

**Mr Mammoliti:** You are an expert at games.

**Mr Morrow:** We did not make the rules.

**Mrs Marland:** I did not realize—I thought he had come in.

**Mr Morrow:** You talk about playing games; you are the one—

**Mrs Marland:** Mr Chairman, I am asking for a 20-minute recess to call all the members for this important vote.

**Mr Mammoliti:** Mr Chair, with all due respect, you called the vote.

**The Chair:** We are just checking to find out if Mrs Marland is in order. As soon as the clerk can tell me whether she is order, I will make a ruling, Mr Mammoliti.

Mrs Marland is in order. According to the standing rules, she cannot ask for 20 minutes until I have put the question, so she is in order. The committee will reconvene at 2:37, and if everybody could agree to begin as soon as Mr Turnbull comes down.

The committee recessed at 1416.

1437

**The Chair:** The committee will come to order.

**Mrs Marland:** A recorded vote?

The committee divided on whether subsection 16(2) should stand as part of the bill, which was agreed to on the following vote:

**Ayes—6**

Abel, Gigantes, Harrington, Mammoliti, Owens, White.

**Nays—4**

Daigeler, Marland, Poole, Turnbull.

**Mrs Marland:** On a point of order, Mr Chairman: Could you clarify for me if the minister is now voting in place of Mr Morrow?

**The Chair:** I will ask the clerk.

Ms Gigantes is properly substituted for this afternoon.

**Mrs Marland:** The reason I raised that point was that it was attempted to have me substituted halfway through a day.

**The Chair:** I understand from the clerk that the substitute for this afternoon was received this morning before 10 o'clock, so it is then in order. If you wish to substitute on to the committee, the committee needs to have that before the committee commences.

**Clerk of the Committee:** Within 30 minutes after the start of the meeting.

**Mrs Marland:** And you are able to split a day between two members as long as the notice is given?

**Clerk of the Committee:** That is correct, but the substitution slip still must be received within 30 minutes of the start of the meeting on the morning of that day.

**Mrs Marland:** All right, because that question did come up and we did not have it clarified. So you can have two members sitting on a committee in one day as long as both, if they are substitutions, are approved within 30 minutes in the morning. Thank you for clarifying that.

**The Chair:** Shall section 16, as printed, carry?

Section 16, as amended, agreed to.



## Section 14:

**The Chair:** We will now revert to dealing with subsection 14(1). We have an amendment which has been moved by Mrs Poole. We have had substantial discussion upon that.

**Ms Poole:** We are going backwards again?

**The Chair:** We are going back to the section that was stood down yesterday until the minister was present. The minister is now present and therefore we will deal with it at this time. I will give everyone a moment or two to find the proper place. I should explain that I chose yesterday to deal with just subsection 14(1), although Mrs Poole had moved the amendment to 14(1) and 14(2). The Conservatives also have an amendment to be placed to 14(1).

I suppose one of the things we could do, if it pleases the committee, would be to deal with the Conservative amendment as an amendment to the Liberal amendment. I notice they have a large degree of similarity. Then we could deal with the differences in that way and then deal with the Liberal amendment. I am open to however the committee wishes to proceed.

**Mrs Marland:** I think the Liberal amendment should stand on its own. It is dealing with land leases and we support that. The only difference in our amendment is that we think the garbage tipping fee should be included. I think we should deal with them both individually.

**The Chair:** That is fine. We will deal with Mrs Poole's and then the Conservative motion.

**Ms Poole:** The reason this was stood down yesterday was because the parliamentary assistant was in the chair—not precisely in the chair, beside the chair—yesterday and at the time we were discussing it she said she would talk to the minister and see whether there was any feeling that the minister would agree that the part about the prescribed operating cost category for the whole residential complex being put in could stand if it were separated from the other portion. The parliamentary assistant was going to speak to the minister on that.

There are basically two items that differ from what the government has in subsection 14(1). The first is that if there was an extraordinary increase in a land lease from a government agency or a financial institution, then that could be flowed through as an extraordinary operating cost. However, it would of course be subject to the cap the same as all other extraordinary operating increases would be.

I would specify and make very clear that this is not referring to private land leases. This is only talking about government or government agency or financial institution land leases in situations where it may be 25 or 30 years since these leases were originally negotiated. Obviously, since that time, the price of land has escalated enormously.

It might end up in a number of insolvencies if indeed there is no provision made. I do not think you would find there are a large number of these in the province, just a fairly small number. For that reason, I do not think the minister would find it was going to deal with a large number of buildings.

The second part basically says that if the government in its wisdom deemed there would be an operating cost category, that they would like to be in the regulations

under which extraordinary operating increases would apply, that they would have that discretion. It does not obligate the government to do so. It does provide the government with that window of opportunity if it wanted to make changes. They would not have to go back to open up the act in total again in order to make those changes.

It differs from the Conservative amendment in that the Conservative amendment is quite specific about the things they would like added as extraordinary operating increases. They have included insurance, cable television, superintendent's salary, sewage fees, garbage tippage fees. To me at least, the government presented quite an adequate case for why garbage tippage fees should not be included, and there may be reasons why some of the others should not. But the government might like the discretion at some stage to change the extraordinary operating categories without having to open the legislation.

I think that second portion was what the parliamentary assistant wanted to refer for the minister's direct answer as opposed to making that kind of decision on her own.

**Mr Turnbull:** With respect to leasing of land, I just did a quick example now. Let us say you have a land value today of \$2,500,000. As I said yesterday, the way you would normally assess the way in which a land-lease rent would be upped would be to take a percentage of the value of the land.

This is just a hypothetical situation: Let us say you had a land value in 1967 of \$500,000 and you applied a 5% per annum rent on that. That would be a \$25,000 charge against the expenses of this building. In 1992, 25 years after 1967, the lease comes up. Let us say the value of that land is \$2,500,000. These are probably fairly reasonable guesses. If you apply 5% against that \$2,500,000, you then have a charge of \$125,000 per annum, so there is an increase of \$100,000 per year from one year to another.

Quite obviously the proposed legislation does not contemplate that kind of increase at all because if you were to eat up all of your increases with respect to extraordinary operating costs for the 3% increase, you are still not going to cover it. That is why Ms Poole's amendment is very important, because the way the bill is drafted at the moment it makes no reference whatsoever to that kind of situation.

**Mr Mammoliti:** As Ms Poole was speaking I saw her looking towards me, and I think that is because of what I said yesterday in terms of subsection 14(1). Perhaps she misunderstood me. I know this particular section deals with government and government agencies and land. What I said yesterday, and this is again just to verify perhaps something that Ms Poole is thinking, I believe the private sector should not be able to increase the lease and pawn it off on the tenants.

To say I would disagree with the government in this particular case would be hypocritical on my part. That is what I was saying yesterday, that I do not think government should be allowed to do it either. If we are saying private owners should not be doing it, then I would say government should not do it either. That is why I have to



say again that I agree with subsection 14(1). I agree with the government's amendment.

1450

**Ms Poole:** I believe the crux of Mr Mammoliti's argument is if private sector land-lease programs are not able to be eligible, neither should government land-lease or government agency land-lease programs. There is a very significant difference, as all people are aware or should be aware. For the private sector there would be a profit motive. Mr Mammoliti implied yesterday that the private sector would perpetrate a huge ripoff. Whether that is true is another point. I do not think that is how the government or the government agencies operate.

We are talking about a legitimate, bona fide renegotiation of a land-lease deal where a government or government agency significantly increases the cost of the land lease. We are not talking about situations which are not at arm's length or where there is a middle person trying to make a quick buck. We are talking about what I hope would be reputable government agencies and the government. I do not think that argument should enter into it at all. We are talking about a particular case. Most of these land leases are actually government, government agencies or financial institutions, so we are talking about a very different category affecting quite a small number of buildings.

**Mr Mammoliti:** It is still not consistent. Even though we believe that government may not do it, its intentions are good, we are honest people and would never rip anybody off, the public is still out there, the tenants are still out there. I would differ in that the public does not believe that. The only way to get the public and those tenants on side on this is to let this go through so they know they are secure and it will not be put on their backs per se if a chosen government at some time decides to increase rent on that basis.

I know our government would never do that and, if it did, I would be very upset. I cannot speak for a Liberal government or a Conservative government. I am a little disappointed in how they have acted in the past, and I would not put it past them to do something like that. It is a little bit of preventive medicine as well in my opinion and I think in the opinion of a lot of tenants out there as well.

**The Chair:** The minister will not be with us tomorrow, and I wonder if we could have her comments while we have some time.

**Hon Ms Gigantes:** I have looked at the Hansard from yesterday and I think my colleague Ms Harrington stated the concerns we have with such an amendment very well. What we are looking at here is an amendment which proposes not only government agencies but financial institutions as the land holders. This opens up the whole question of the financing of land in such properties.

We have made it very clear that it is not our intention in this legislation to allow a pass-through on the subject of financing. That makes it a distinct change from the existing legislation, Bill 51. This amendment begins that process. We do not find it acceptable. We think the items for which a landlord might be able to make an application for an extraordinary increase are well listed. You know that

tenants have the same counterability to apply for a decrease if there is an extraordinary decrease in operating costs for those same items. Of course, it would not be possible for a tenant to ever expect to look to a decrease in cost associated with land leasing.

I think our position is quite clear. It may not be the preferred position of the opposition, but it is the position that stands with the principle in this legislation, which is that we are not passing financing costs for land through to tenants in this form, as an extraordinary cost, or any other way.

**Ms Poole:** I would point out to the minister that if she is basing her reluctance to allow any other categories on the fact that tenants could not reasonably expect a decrease while landlords could expect an increase, then I would ask her to re-examine the extraordinary increases for municipal taxes. I can assure you there will be no decreases tenants can ever apply for in municipal taxes.

**Hon Ms Gigantes:** You may assure me, but you might be wrong.

**Ms Poole:** I might be and so might you.

**Hon Ms Gigantes:** So be it.

**Ms Poole:** But I think that is not a valid reason to base it on. The other thing you brought up is the extraordinary decreases, and in the event that you wished to have an extraordinary decrease in another prescribed area, as it is now set out you could not do it. So it would operate not only for extraordinary operating; there could also be an amendment for extraordinary operating decreases as well as increases.

**Hon Ms Gigantes:** Mr Chair, it is a very generous offer we are given by the opposition that we will not have to come back and go through legislative amendment on this bill, and certainly anybody who has watched any of the proceedings on this legislation would know how tempting such a position would be. However, it is against the principle we are following in this bill as far as pass-through of financing costs is concerned, and we are not going to re-establish that in the little foothold that would be established under the notion of extraordinary increases in operating costs.

**Ms Poole:** Perhaps I should clarify for the minister that when I made reference to the possibility of opening up in the regulations the matter of extraordinary operating decreases, I was referring to the final part of 14(1), which deals with empowering the government to deal with a new operating cost category, whether it be increase or decrease, through regulation.

**Hon Ms Gigantes:** Oh, I understand exactly what you are doing.

**Ms Poole:** It might not have anything to do with financing.

**Hon Ms Gigantes:** You are widening the list of items, and what you are doing is entering an item which begins to get into the finance area, and we have said—and I will repeat again in case you did not understand—that we are not going to allow cost pass-throughs of financing costs to tenants, and we will not introduce it by the back door in



this small toehold you are suggesting in the area of land leasing.

**Ms Poole:** I just wanted to make one other point for the minister, because she was not here yesterday, so she might not have understood what I was referring to. I was not referring to the land lease section. I was only referring to the last line—I guess it is the last line and one word—which is completely separate from the land lease issue.

**Hon Ms Gigantes:** You mean, “any other prescribed operating cost.”

**Ms Poole:** Yes.

**Hon Ms Gigantes:** No, thank you. We have said it. We have said no yesterday. We have said no today.

**Ms Poole:** But I am saying it has nothing to do with financing, that last part. You were saying you were against introducing a toehold for financing.

**Hon Ms Gigantes:** That is correct.

**Ms Poole:** That does not.

**Hon Ms Gigantes:** We would like to set in legislation, painful as it might be to have to come back and amend it at some time, the exact terms so that everybody understands them, and we would allow for extraordinary increases and allowances for municipal taxes, for hydro or for water or heating for the whole residential complex. We are not going to allow, by regulation, this item to sort of drift so that at some point in time—perhaps we may not be the government, and were you the government, we would sure like to make sure you have to come back legislatively and get the change.

**Ms Poole:** I think it shows a dramatic lack of flexibility on the part of the government. We know this legislation is not going to be reopened for some time.

**Hon Ms Gigantes:** Good.

**Ms Poole:** Not because we would not want it to be but because the government would refuse to do it.

**Hon Ms Gigantes:** This one, yes.

**Ms Poole:** What we are saying to you is that we want to give the option that if there are other categories, whether they be increases or decreases to the tenants, you will be able to do it.

**Hon Ms Gigantes:** We appreciate the offer, but the answer is no.

**The Chair:** Thank you, Ms Poole. As the committee has agreed to adjourn at 3 o'clock, we will—

**Mr Turnbull:** Can I just ask one question of the minister very quickly? In light of the fact that you are opposed to the Liberal amendment to subsection 14(1), can I take it that you will come forward with separate legislation which will disallow any governmental organization or financial institution from increasing the land lease costs?

**Hon Ms Gigantes:** Absolutely not, no. That does not make sense to me at all.

**Mr Turnbull:** Okay. You do not mind that the landlord is going to suck air on it, but you do not want the governmental institutions to do this.

**Hon Ms Gigantes:** We could get into a very long discussion on this, which probably would be out of place right now, Mr Chair.

**Mr Turnbull:** That is absolutely unacceptable.

**The Chair:** Thank you, Mr Turnbull. We will adjourn and meet tomorrow morning at 10 o'clock to resume consideration of this bill.

The committee adjourned at 1501.

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Marland, Margaret (Mississauga South/-Sud PC)

O'Neill, Yvonne (Ottawa-Rideau L)

Poole, Dianne (Eglinton L)

Turnbull, David (York Mills PC)

Winninger, David (London South/-Sud ND)

**Substitution(s) / Membre(s) remplaçant(s):**

Daigeler, Hans (Nepean L) for Mr McClelland

Gigantes, Evelyn (Ottawa Centre NDP) for Mr Winninger

Morrow, Mark (Wentworth East NDP) for Mr Winninger

Owens, Stephen (Scarborough Centre NDP) for Mr Bisson

White, Drummond (Durham Centre NDP) for Mr Marchese

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Première intersession, 35<sup>e</sup> législature

## Official Report of Debates (Hansard)

Wednesday 15 January 1992

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Le mercredi 15 janvier 1992

### Standing committee on general government

Rent Control Act, 1991

### Comité permanent des affaires gouvernementales

Loi de 1991 sur le contrôle  
des loyers

Chair: Michael A. Brown  
Clerk: Deborah Deller

Président : Michael A. Brown  
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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON GENERAL GOVERNMENT

Wednesday 15 January 1992

The committee met at 1018 in room 151.

### RENT CONTROL ACT, 1991

#### LOI DE 1991 SUR LE CONTRÔLE DES LOYERS

Resuming consideration of Bill 121, An Act to revise the Law related to Residential Rent Regulation / Projet de loi 121, Loi révisant les lois relatives à la réglementation des loyers d'habitation.

#### Section 14:

**The Chair:** The standing committee on general government will come to order. The business of the committee is to deal with clause-by-clause of Bill 121. When we adjourned yesterday afternoon we were considering the Liberal amendment to subsection 14(1). The only member I have on the list is presently not here. Does anyone else wish to speak to the Liberal amendment?

**Mr Mammoliti:** Mr Chair, you will have to forgive me for a couple of minutes, but I have to tell you this story because I think it is funny and I think it is a good way to start the day. I spoke on this yesterday, and as I was speaking I spoke on neglect, of course, as Ms Poole had mentioned neglect. I mentioned there was a building in my riding that I thought the landlord was neglecting. I mentioned in particular a window and that window being ready to fall out because of the neglect over the years.

As I was speaking at that time, I got a nudge from somebody in the building who said, "Come outside to the parking lot, because there's something wrong with your vehicle." I went out to the parking lot, and ironic as it is, one of the windows of this building had fallen on to my vehicle.

**Mr Morrow:** No.

**Mr Daigeler:** Talk about neglect.

**Mr Mammoliti:** Yes. Not that the Speaker is neglectful; I am not saying that the Speaker is neglecting this building, but I am saying that it is funny. I thought I would start the day off right perhaps. Thank you very much for the time.

**The Chair:** Thank you for that information, Mr Mammoliti.

**Ms Poole:** Excuse me for my voice, Mr Chair, but I cannot quite control it. If Mr Mammoliti is suggesting that in the first case he was giving this as an example of neglect, and that the same scenario happened yesterday with the Legislative Assembly, with the government of this province and that we are neglectful, I think it makes the point that you can have a very good landlord, a very responsible landlord, and sometimes things happen to these old buildings that are beyond your control. I think that very well illustrated the point we wanted to make about neglect and how one has to be very careful with criteria for neglect, because what Mr Mammoliti thought was neglect in one instance I am sure he would be loath to accuse the Legislative Assembly of in another.

**The Chair:** I remind members that we are speaking to section 14.

**Mr Mammoliti:** Very quickly, I take Ms Poole's suggestion with a grain of salt. I did some investigating and I think you are right, Ms Poole, in terms of the window. I was told that it was because of previous governments and the fact that nobody attended to this window that it fell. I went back and asked how many years and they said "a couple of years." I am just asking. I am not too sure which government it was at that time. I believe it was a Liberal government. Perhaps there was some neglect there, Ms Poole.

**The Chair:** Interesting.

**Ms Poole:** Just on the point of neglect and putting the case for the previous government, it was the previous government that actually had the standing committee on the Legislative Assembly look at restoration of this building for that very reason. In fact, it was some NDP actions on that committee that delayed the whole matter, so I am afraid—

**Mr Mammoliti:** What does this have to do with subsection 14(1)?

**Ms Poole:** I was just responding to Mr Mammoliti, Mr Chair. That is what it has to do with subsection 14(1).

**The Chair:** If anything is in order this morning, this is.

**Ms Poole:** That is it, Mr Chair.

**The Chair:** Thank you. Are there further questions or comments on Ms Poole's amendment to subsection 14(1)? If not, shall the Liberal amendment, Ms Poole's amendment to subsection 14(1), carry?

**Mr Turnbull:** Recorded vote, Mr Chairman.

The committee divided on Ms Poole's motion, which was negatived on the following vote:

Ayes—3

Daigeler, Poole, Turnbull.

Nays—5

Harrington, Lessard, Mammoliti, Morrow, Owens.

**Ms Poole:** On a point of order, Mr Chairman: Since the Liberal amendment to subsection 14(2) was in direct relation to the amendment to subsection 14(1), which has failed, we will withdraw the amendment to subsection 14(2).

**The Chair:** Mr Turnbull moves that subsection 14(1) of the bill be struck out and the following substituted:

"14(1) The landlord may base an application on an extraordinary increase in operating costs for hydro, heating, municipal taxes, garbage tippage fees, water and sewage fees, insurance, cablevision, superintendent's salary and rent, maintenance or any provincial and federal taxes the landlord must pay in order to maintain the residential complex."

Do you wish to comment on this amendment?



**Mr Turnbull:** Quite clearly it is in recognition of the fact that we want to make sure that buildings are maintained for tenants and that the landlord has sufficient funds to be able to do this, recognizing that the list of items I read into the record is outside of the control of the landlord, the majority of them being amounts of money mandated by various levels of government or such people as hydro that the landlord should pay.

We do not believe the present rolling three-year average is sufficient to reflect such costs as Ontario Hydro's going up by close to 12% this year. We know that tippage fees are going up by extraordinary amounts. When you use a rolling average, the reflection of those numbers is a very trailing indicator of those costs. So this amendment tries to recognize the fact that these are costs outside the landlord's control and tries to give him sufficient funds to make sure he can maintain the building for the tenants to have a clean and safe house.

**The Chair:** Further questions or comments?

**Ms Poole:** The one I would like to discuss is cablevision. This was previously included in extraordinary operating costs under the Residential Rent Review Act. Cable costs have gone up fairly significantly over the last years. One of the problems I have with it being excluded now is that I am afraid landlords will choose to deny cable to tenants. Some people may say this is not possible, but in fact it is true. I have one building in my riding, 500 Duplex Avenue, where I have been battling the landlord for years over the fact that he has refused to allow the cable company to come into the building. I have approximately 600 tenants in that building who have not had cable because of this situation.

If a landlord right now has cable in the building and wishes to have it removed, that would be within his or her right. He would have to make a corresponding decrease in the rent, but in many of these cases the rent was quite nominal. In fact, historically, tenants were paying about \$3 a month, which I think you can recognize was a very low cost. The landlord could just deduct that amount from the rent and then refuse to allow Rogers Cable or any other cable company to put the cable in. That is one fear I have about this, that if landlords have a significant increase in costs and can get no recognition for it, they may well decide to just remove it from the building.

I think you will also find, with reference to things like hydro, that landlords may well be putting tenant units on individual meters. You will have all sorts of things happening like this, which I do not think was in the spirit of the legislation and certainly was not anticipated. It may well create problems with some things like cablevision not being included.

**The Chair:** Further questions or comments on the Conservative motion regarding section 14(1)?

**Mr Owens:** Just a quick question to the parliamentary assistant: If cablevision was included initially, why was it withdrawn?

**Ms Harrington:** That is exactly what I was thinking. As you may know, there are four categories that are left as extraordinary operating costs that we feel are beyond the landlord's control. Those are hydro, which we just

mentioned, heating, municipal taxes and water. As Mr Owens mentioned, cablevision was in Bill 4. We have not included it here for a couple of reasons. We want to simplify this list as much as possible.

I wonder if you could comment briefly on cablevision.

**Mr Harcourt:** There has been a trend across the province for landlords to withdraw cablevision and put it on a tenant-pay basis, one of the reasons being because of the pay-TV type of cablevision, where tenants can opt for different options depending on what the individuals want. That has been happening right across the province. In fact, there are not a lot of buildings where there is a bulk cablevision agreement at the present time.

1030

**Ms Poole:** I was interested in the parliamentary assistant's comment about leaving in the ones which were beyond the control of the landlord. I certainly agree that things like hydro and heating and municipal taxes are instances of that. However, I really do not see where cablevision is within the control of the landlord. Insurance is another instance where it is totally beyond the landlord's control. I agree with you that salary and rent are within the landlord's control, so that is probably an inappropriate one to retain on the list.

I really have difficulty with the premise that the reason all the others were removed was just to make the list simple. I would think that in addition to its being simple, you would want the list to be fair and to cover all the necessary extraordinary costs. In the instance of things such as insurance and cablevision, certainly that is true. One of the problems with things such as cablevision is that it relies on the consent of the landlord to have it in the building. I have never seen landlord-tenant relationships at such an all-time low and I know I have heard a number of landlords threatening that if they are going to be miserable, they are going to make sure everybody is miserable. It is not an attitude I approve of but, that being said, it is a reality and I think this kind of omission is going to put the cat among the pigeons. We may find that tenants are the ones who are going to end up suffering.

We also want to make sure landlords have adequate insurance on their buildings. As I mentioned, that is one area where it is totally beyond the landlord's control. They can obviously shop around for the best insurance rate, but that is the only way in which it is within their control. That has been removed and I think that is a legitimate cost. You would want to ensure that buildings are properly insured.

**Ms Harrington:** I would comment briefly. Ms Poole did mention that with regard to insurance rates the landlord can shop around. That is the difference with something like hydro or municipal taxes, which is something you cannot decide yes or no to. The other costs we are mentioning are reflected in the building operating cost index, which is part of the guideline. The guideline would go up and down reflecting what the costs to the landlord are.

**Mr Owens:** Just on Ms Poole's comments, if I understood the response to my question from the parliamentary assistant and the ministry staff person with respect to



cablevision, it is that the billing is individualized now rather than in bulk.

**Ms Poole:** Not in all cases.

**Mr Owens:** In terms of looking at billings across the province, was there a determination made as to how many buildings are still involved in bulk billing before the decision was made to withdraw the section?

**Mr Harcourt:** We do not have an exact number. The trend across the province has been towards a tenant-pay basis and more and more bulk agreements are being discontinued.

**The Chair:** Further questions or comments on Mr Turnbull's motion on subsection 14(1)? If not, shall Mr Turnbull's motion carry?

**Mr Turnbull:** A recorded vote, please.

The committee divided on Mr Turnbull's motion, which was negated on the following vote:

### Ayes—3

Daigeler, Poole, Turnbull.

### Nays—5

Abel, Harrington, Lessard, Morrow, Owens.

**Clerk of the Committee:** Are you going to pass subsection 14(1)?

**The Chair:** We passed subsection 14(1) before.

**Clerk of the Committee:** You just did Mr Turnbull's amendment.

**The Chair:** Right, then we are on subsection 14(1) itself. Questions, comments? If not, shall subsection 14(1) carry? Carried.

On subsection 14(2), we have a government and a Conservative amendment. Ms Poole has withdrawn the Liberal amendment. Ms Harrington, would you like to give us an explanation of the government's change?

**Ms Harrington:** Subsection 14(2) sets out a test for determining whether the increase in one of the specified cost categories is extraordinary. There must be an increase of 50% or more from the amount for that cost category in the rent control index. The amount is expressed as a percentage representing the three-year moving average of cost changes in that category. For example, if a heating cost increase of 6% is recognized in the rent control index, a landlord's heating costs must have increased by 9% or more to qualify for an extraordinary operating cost increase. This is a government amendment to clarify that the increase that was measured as a 50% change in the percentage not be a 50% change in the actual cost.

**The Chair:** Mr Turnbull, would you like to put your motion?

**Mr Turnbull:** We are going to withdraw ours because it was ancillary to the previous amendment.

**The Chair:** Then we are just dealing with the government amendment to subsection 14(2). Shall subsection 14(2) carry? Carried.

Subsection 14(3).

**Ms Harrington:** Subsection 14(3) provides, "The rent officer"—in making findings about extraordinary operating

costs—"shall not consider any portion of an increase in municipal taxes that results from non-compliance with a work order." This is a government amendment to provide the same provision with respect to extraordinary operating cost increases in municipal taxes that result from non-compliance with a work order as was found in the Residential Rent Regulation Act—I am sorry, the Residential Rent Regulation Amendment Act of 1991.

**Ms Poole:** As the parliamentary assistant just corrected herself, this was in Bill 4. The reason it was in Bill 4 is because there was a Liberal amendment to include it. This takes care of the scenario where a landlord does not do the necessary repairs in his or her building and correspondingly the municipality comes in, issues a work order, and the municipality ends up doing the work because the landlord refuses to obey the terms of the work order. Until this amendment was put into Bill 4, that would have resulted in the city putting the additional cost on the taxes. The landlord would then claim an extraordinary operating cost and be able to put through a rent increase to the tenants because he had not done his work and it had to go on the taxes. This was to take care of that situation.

It is certainly the Liberal Party's position that this amendment should be in the current legislation and we will be supporting it.

**Mr Owens:** Are you patting yourself on the back?

**Ms Harrington:** I would like to thank the Liberal Party for putting that forward last spring. I remember that was a very important part to amend and here we have it again.

**The Chair:** Further questions, comments or applause?

**Mr Owens:** Let the record show applause from the government side.

**Ms Poole:** I think Mr Owens felt the Liberal Party was congratulating itself on this. I will just tell you, if we do not, nobody else in this room will.

**The Chair:** Shall subsection 14(3) carry? Carried.

1040

Members will note we are moving on to a Liberal amendment to add section 14.1. This is a little confusing because it is actually a new section in the numbering that we are discussing. It is section 14.1.

Ms Poole moves that the bill be amended by adding the following section:

"14.1(1) The landlord may base an application on an increase in financing costs for the residential complex of at least 2%.

"(2) The rent officer shall not consider an application under this section unless the financing on which the increase is based has been negotiated at arm's length."

**Ms Poole:** This amendment is being put forward with another one later in the legislation where if there is a decrease in mortgage rates, that decrease will be passed on to the tenants. Again, in a situation where there is an expense beyond a landlord's control, such as an arm's-length mortgage increase or decrease, that should either be allowed to the landlord or passed on to the tenant, depending on the particular situation. This was something that was in Bill 4. The government had already accepted in Bill 4 that interest



rate changes, if at arm's length, were a reasonable thing to include. I am sure it was just an oversight by the government that it was not included in this legislation.

The second part of this particular amendment says that the matter has to be at arm's length. This of course is to prevent the scenario where a landlord would have his mother, father or a partner in another company make a loan or renew the mortgage for the landlord at a greatly enhanced rate. We certainly do not want that kind of scenario to occur. We feel this is a most reasonable amendment. Legislative counsel can correct me if I am wrong, but it is later on, around section 25 or something, where we deal with the decreases in interest rates and how that should be passed on to tenants. As the legislation now stands, if a landlord's mortgage costs are reduced, that is not passed on to tenants, and if a landlord's mortgage costs increase, that is not passed on to tenants in the way of a rent increase. I think this is a very balanced amendment. The government should consider accepting it.

**The Chair:** Further questions or comments? If there are no other comments, Ms Harrington will reply.

**Ms Harrington:** The minister had said very clearly yesterday that we will not be passing any financing costs or costs of buying the building through to the tenants. The other point I want to make about this suggestion is that if the government were to track the interest rates with regard to both increases and decreases, as Ms Poole has said, we would have to pass through, if this amendment went through, any increase over 2% or any decrease below 2%. This certainly would have to have a tracking mechanism and it would also add a lot of complexity if the government had to do this.

**Ms Poole:** There is absolutely no reason why any type of tracking would have to occur. It is a decrease or decrease in the landlord's mortgage rate by 2%. There need be no overall tracking of what the mortgage rates are at the time. It depends on what mortgage rate the landlord had on the building previously. I think this is extremely shortsighted. We are now in a scenario, with interest rates falling dramatically over the last couple of years, where it would be to the benefit of tenants. On the other hand, I think in situations where the landlord has had an increase in the mortgage rates it is fair that it be passed on.

I have a question for the parliamentary assistant. In Bill 4, interest rate increases or reductions were included in the legislation. At the time the government had made it clear that it did not want financing costs passed on to the tenants. That aspect was removed in Bill 4. It did not appear because the government had stated that principle. Yet at the same time, in Bill 4 the government had put in a provision about interest rates. They said it was fair that they do so. What has happened in the last year, that the government has reversed itself on this position? It does not make any sense whatsoever.

**Ms Harrington:** We have examined the long term further. Bill 4 obviously was an interim piece of legislation and what we are looking at was how this legislation, Bill 121, will deal with the whole situation for the years ahead, something that is workable. We do not believe that the

changes and fluctuations of interest rates over the life of the building is going to be a substantial factor that should be factored into the rent.

**Ms Poole:** Mrs Harrington, I cannot honestly believe that you feel this has no effect on the overall lifespan of the building. We all lived through the early 1980s where the interest rates went up to 21%, 22% and 24%. It was absolutely devastating. People lost their homes. People lost their buildings over it. It can have a very dramatic impact. On the other hand, I cannot see how you can argue that if an interest rate goes from 15% down to 9% over a three-year period, those tenants should not be entitled to have that reduction passed on to them. This is totally asinine if the government says it will not support this. It is most reasonable and in fact substantiates their own policy. It does not add one whit of complexity to the legislation. It is very simple. It worked well under the RRRA. It worked well under Bill 4. I think it is just shortsighted folly if you are not going to support this.

**Mr Turnbull:** We are going to bring our own amendment, so I will speak more in detail about that, but I have to point out that it is exceedingly easy to track interest rates. You need absolutely no expertise at all. We have recognized that many of the things the government is doing at the moment demonstrate it has no expertise, but it does not need any expertise to track interest rates. They are published every week on rate sheets.

**Ms Harrington:** We are talking about an individual building.

**Mr Turnbull:** Quite frankly, you want it to be an arm's-length number and there is a very small span between one financial institution and another as to what the interest rate is. To suggest it adds a level of complexity is completely misleading to the people who are watching this program. There are rate sheets published by all the financial organizations every single week. I have heard for years NDP members, both at the federal and provincial level, whining and snivelling about interest rates, and now to suggest it does not make any difference is absolutely sticking your head in the sand.

**Mr Daigeler:** Ms Poole asked a question that I was going to ask, but I was not very satisfied with the answer that was given by the parliamentary assistant. Why was it in Bill 4 and why is it withdrawn now? If it made sense to the government at the time of putting forward Bill 4, why does it no longer make sense to the government? I think that is the key question. Obviously, it was something your government supported then. What really has brought about the change? I did not hear any satisfactory answer to that, so perhaps the parliamentary assistant could give it another try.

**Ms Harrington:** What I stated first was that this is long-term. Mr Turnbull, I believe, or Ms Poole mentioned buying a home, relating it to that same situation. When you buy a home, you are taking that responsibility if the rates go up or if they go down in the future. As an owner, that is your financial responsibility. The owners of apartment buildings are in the same category. They are responsible for the financing of the building. This government believes, after re-examination, as Mr Daigeler has said, that



the financial responsibility of the buying of the building and the financing of that building are the owner's responsibility and not the tenants'. If I am not explaining it clearly enough with regard to the complexity issue, I will ask my assistant if he might be of help on that particular issue.

1050

**Mr Daigeler:** Perhaps I could just again point out that I think you are explaining why you are holding the position you are holding right now, but what I asked for is why you changed your mind. In Bill 4, why did you think it made sense and include it and now you think it no longer makes any sense and you have withdrawn it? My question really is, why did you think it was good for Bill 4?

**Ms Harrington:** Actually, it was a year ago we started with Bill 4. It seems such ages ago. The comment I would like to make on that is that there has been a lot of water under the bridge. In other words, we have had a lot of consultation and have talked to a lot of people. We have reviewed a lot of papers about what should be passed through to tenants and what should be landlords' responsibilities. After speaking with these people and looking at the submissions, we have re-evaluated the position we held with Bill 4. I would like to see if my assistant can explain with regard to the complexity of the over 2% with the financing costs.

**Mr Harcourt:** Just in terms of the complexity, if you want to track increased financing costs, there is also a necessity to track decreased financing costs. The problem is that it means tracking each financing instrument on a building-by-building basis. Often within an individual building you will have two, three or even more financing instruments. Obviously, we cannot expect a landlord to come to rent control when there is a decrease in financing costs; therefore, there is a need for the government to track all of those.

In terms of the previous legislation, there was also the complexity in terms of determining when arm's-length transactions were held and just tracking the financing generally. That was one of the least understood aspects of the Residential Rent Regulation Act.

**Mr Owens:** I want to make a comment on Mr Turnbull's statement with respect to interest rates and NDP federal and provincial members snivelling and whining about interest rates. I am just curious if his friends in the business community who have been forced out of business by interest rates are also called whiners and snivellers as well. I think that kind of conduct and that kind of language is totally inappropriate and certainly degrades the dignity of this committee. I would request that the member restrain himself, although I know it is quite difficult at times to act like a member of provincial Parliament, but I suggest he try and do that.

**The Chair:** Direct the comments directly to section 14.1. Thank you, Mr Owens.

**Ms Poole:** I would like to go back to Ms Harrington's comments about the difference between a person who owns a house and a person who owns a building and that this government has decided in its wisdom, or lack thereof, that if you own a building you should not be able to pass through interest rate changes. Perhaps it would help Ms

Harrington if I talked a bit about the philosophy of rent review in this province over the last 16 years, why it was brought in and what the underpinning has been.

When rent review was brought in, it was to prevent rent gouging. It was a consumer protection piece of legislation. However, there was a recognition that as soon as you regulate the private market in quite a strong way there should be an allowance for cost pass-through, for legitimate costs to be passed through. There was also a recognition and an understanding that if a landlord had legitimate costs, whether they be spent in repairing the building, whether they be interest rate changes, whether they be in things such as hydro and water increases, those should be passed on and allowed because you are imposing a level of regulation on a market.

Now what has changed is that the NDP has said consistently that it did not believe there should be any cost pass-through. Well, the government has changed its mind in at least two areas. The government has said yes, there should now be cost pass-through for major repairs and renovations and in capital areas. This legislation is quite different from their campaign promise in that regard. They have also said that extraordinary operating costs such as hydro and heat, water and taxes should be passed through. But they have not given any logical reason why something like interest rates, which are totally beyond the control of a landlord, should not be reflected, whether there be an increase or a decrease.

When this government talks about complexity in this day of computers, I just have to laugh. That was the reason they said they were not going to put costs no longer borne into the legislation. It was too complex. They could not figure it out. When I brought up with them the fact that we have computers these days, so maybe it could be done, it seemed to quite surprise them. But lo and behold, in spite of its complexity, the government has now introduced an amendment to this legislation to have costs no longer borne.

Maybe they should take a second look at the complexity they have cited for this particular section and see whether there could be a change of heart in this regard, because quite frankly their arguments do not hold water. They put it in under Bill 4. They removed it under this legislation. I think they should re-examine their position.

**Mr Turnbull:** As Ms Poole has correctly pointed out, when the Conservatives brought in rent review to protect tenants because there was an unusually large increase in rents at that time, they recognized the principle of cost pass-through. In fact, cost pass-through is something that normally occurs in any free market enterprise. Where your costs go up you pass them through to the extent that you have the ability to. There may be certain years when you cannot fully reflect your increased costs, but that is offset by other years where you can. The market will regulate it. The Conservative legislation, and indeed the Liberal legislation which followed it, recognized that principle because clearly the people who went into these ventures went in with those awful words "profit motive." On this side of the table it still is not a dirty word. People can make a profit only if they can reflect their costs.

I am curious that last week the government went into an arrangement with Bombardier where the government is



going to participate to the extent of 45% in the purchase of de Havilland, but the government's deal is that is going to pick up all the guarantees for losses for the next three or four years. The cost to the taxpayer could be something in the region of \$300 million.

**Mr Morrow:** On a point of order, Mr Chair: It is really nice that the third party is advertising that we are doing a fantastic job for the province, but can we please stick to the section?

1100

**Mr Turnbull:** With this example, Mr Chair, I am illustrating the effect of losses. It is directly related to this section. Here we have a government that says, "Okay, we're going to guarantee the losses," in other words, because it does not feel it can pass those losses through in the cost of the aircraft. It ends up with the taxpayers having to pay a bill which they really should not.

Nevertheless, here they want private landlords to pay if there is an increase. By the same token, reflecting on Ms Poole's amendment, if interest rates go down, as they are at the moment, this is a government which says, "No, we don't believe we should have those costs reduced." I am sure private landlords are pleased about that aspect of things, but there is complete inconsistency in what you are doing in this government.

You do not understand the way cost pass-throughs work and why they were put in place. Unless you have a full cost pass-through you cannot have any increase in the value of the building, and therefore you cannot have capital appreciation and there is no profit for the landlord. If you think people are going to invest in this province when you bring in regulations which disallow profit, I think the Premier is wasting his \$50,000 television time and you should have a caucus retreat and rethink all of your policies, because you are not going to get the province working.

Interjection.

**Mr Turnbull:** We have, and we distributed them.

**Ms Harrington:** I would like to thank Mr Turnbull for expressing his opinions so clearly as to how he feels the system should work. Ms Poole mentioned the campaigning of this government with regard to protecting tenants in this province, and certainly we did that very strongly. What we are committed to is stability and security for tenants, and I think the tenants realize that. We have worked with tenants' groups. We have seen them here at our meetings the whole year long.

We believe the money paid out by tenants should go to the costs of the building: the capital costs and, as Ms Poole said, the operating costs. We have allowed extraordinary operating costs so that when things happen beyond the landlords' control, the tenants' dollars are involved in paying for that. But what we are not allowing—and let me make this extremely clear, and the minister said it very clearly yesterday—is tenants being responsible for the purchase price of that building. We believe that is the landlord's responsibility. He is the one who decides to buy that building, and the costs of financing that building are his.

In other words, we do not have a market system, as Mr Turnbull would like, where real estate prices go up

because costs escalate. This has happened in Ontario over the last 15 years, and this is the cause of a lot of the problems we have today: the escalating cost of land and buildings. With regard to tenants' homes, we do not want to see that escalation in the marketplace.

**Mr Turnbull:** With respect, I would just point out, and we have had expert testimony to this effect, that in point of fact the average increase in apartment values and average returns have underperformed all other investment vehicles. It is not a question of that being a root cause of the problems. We have people who invested in these properties, and you are saying, "We're not going to allow them to recoup the cost of their investment." It undermines the whole reason why anybody would want to go into private ownership. If you want to be very honest about it and say, "Look, we philosophically disapprove as a party of private ownership of apartment buildings," that is something I will disagree with you on, but at least I will give you credit for the fact that you are being intellectually honest about it.

But do not expect private people to invest in properties unless they see the potential of profit. Part of the profit component in any business—I do not care whether it is running Ontario Hydro or building airplanes at de Havilland or what it is—is that you must recoup your investment. There is no other way. That is the way business works.

**Ms Harrington:** Mr Turnbull, I think we started discussing this, you and I and probably the rest of the committee, about a year ago, the different approaches we had. I do not want to go into this in detail because we could go on and on for ever, but I do want to point out to everyone that running a building on an ongoing basis is certainly a business. We believe there should be a fair profit in it for the landlord. But it is in a way different from owning and running a commercial building or any other investment in this province in that we are dealing with people's homes. They need that security of tenure, of not having huge rent increases.

That is why the government is of course involved and that is why it was under the Conservative government in 1975, to try and give some stability to the marketplace. That is why this issue is a little different than a wide-open marketplace which you would like to see. This is protecting people, and that is why we are in this. We believe it is a business for the landlord and that he should make a fair profit, but it should not be a market system where it can escalate.

**Mr Turnbull:** I know we disagree and we have had some vigorous discussions both in the committee and privately, some delightful discussions about this, but I am just pointing out that you cannot say this is simply a different type of situation. For someone going into any business, even if it is providing rental accommodation for people as compared to any other type of business, there still has to be a profit motivation. Unless you can recoup your cost of investment, you cannot have a business. I mean, you automatically get out of the business. It is a simple fact of life. It is a hard fact that they are learning in eastern Europe today, but nevertheless there has to be a recouping of your investment; otherwise people will not invest. It leads to the whole problem that people will not invest and will not build.



Now the government is spending approximately 75% to 100% more than the for-profit sector can build apartment buildings for. That is taxpayers' money, including tenants' tax money, being blown out of the window, and it is totally counterproductive.

**Ms Harrington:** I have one final comment, Mr Turnbull. Under the past legislation where there was pass-through for interest rates and financing charges, this was a guaranteed investment for the landlord that whenever the cost went up, he could automatically pass through. What we are saying now is that the investor or the landlord has to take that risk. He is responsible for what he buys.

**Mr Turnbull:** You see, this occurs normally in any controlled market. Look at milk marketing boards. Yes, it is a guaranteed investment. It may not be the biggest rate of return, but it is guaranteed. If you are going to say you will pull out from under the landlords the guarantee element that at least their costs are going to be passed through, and at the same time you control the amount of upside they have, nobody on God's earth will invest. That applies to any business. This is Economics 101.

**Ms Harrington:** I think I stated very clearly that it is the investor's responsibility and that we are allowing a fair profit, and that is our position.

**Mr Turnbull:** But you are not. It is simply incorrect. If your costs go up, you do not have any control over it. If you think somebody is going to put \$5 million into a building, cash—because that is essentially what you are going to say, that the only way we should put it in is cash—and then he is going to take the vagaries of the return, you are crazy. What they do is to invest and use leverage. Every business uses leverage to some extent, and it depends on the nature of the business how great that leverage is. It happens to be a fact of real estate that you tend to use more leverage than other businesses, and to the extent that the cost of interest is out of your control, your ability to make profits is dictated by those costs, if you are controlled at the other end.

You have to have a pass-through. It has always been recognized by government that you must have a pass-through mechanism. Even socialist governments have recognized that there has to be that element. You cannot just say, "These people are making a profit out of the people's homes." It is important that we provide clean, safe housing for people at the best possible price. The only way you can do it is by getting the private sector to invest. You are guaranteeing that not only the private sector in rental housing but all of the private sector will be absolutely spooked, as it is today, by the activities of this government, because on the one hand you are saying, "We want confidence from business," but at the same time you are saying, "We're ignoring the plain facts of economics."

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**Ms Harrington:** Mr Turnbull, just one final comment here, I hope. The private sector is in the midst of a recession in Ontario and certainly we understand the problems we are facing.

**Mr Turnbull:** It is a worldwide problem.

**Ms Harrington:** This government has now allowed landlords to have 6% in this coming year, 1992, and a pass-through of up to 9%. How many tenants can afford that? How many tenants can have an increase in their income of 6% or 9% in this year?

**Ms Poole:** On a point of order, Mr Chair: Ms Harrington has just said that this government—

**The Chair:** A point of order?

**Ms Poole:** Yes, on a point of order, and it is a very important correction, Mr Chair—that this government has allowed the landlords 6% and also up to 9% for cost pass-through. That should be up to 3%.

**The Chair:** It is not a point of order, it is a point of information.

**Ms Poole:** Which I am sure you are grateful to receive.

**Ms Harrington:** Yes, I am sorry, for a total of 9%.

**Mr Turnbull:** And built into that number is 2% for capital investment, so in point of fact it is 4%, yet we have hydro rates, which the government controls to great extent, going up by close to 12%, we have tax increases augured in Metro of 15%, so please do not tell me how generous you have been. You have not, because you have been absolutely reluctant to control the government-controlled numbers, yet at the same time—

**Mr B. Ward:** On a point of order, Mr Chair: On comments made perhaps the parliamentary assistant can clarify, but is there not a pass-through position for extraordinary increases in municipal taxes and hydro?

**The Chair:** Order, Mr Ward.

**Mr B. Ward:** That is a point of clarification, I guess.

**The Chair:** Yes, which does not exist.

**Mr Turnbull:** The fact is that the rolling formula for the reflection of those costs does not adequately, in the year it is incurred, reflect it. That is a great problem when you have significant increases, particularly from governmental agencies, and you have to wait for the rolling average—you do not have the money when you need it. If you are going bankrupt it is not going to help you, the fact that you are going to get the money reflected in two years' time.

**Ms Poole:** The parliamentary assistant, I guess some time ago now, did say that this government believed that tenants should pay the costs related to the building, such as capital, increases in capital and extraordinary operating expenses, but that it did not believe that tenants should be financing the building.

This is quite different than what this NDP government promised in the election campaign. This government promised that there would be one rent increase per year geared to inflation and nothing else, no special bonuses for capital or financing. So this is very different from what you promised. Yet you have now reconsidered your position—to be kind I shall phrase it that way—and have decided that capital and extraordinary operating expenses should be allowed cost pass-through in this act.

The question I have for you, Ms Harrington, is quite direct. In the election campaign you were very clear that financing costs of any type would not be passed on. Why



did your government put it in Bill 4 that interest rates could be passed on?

**Ms Harrington:** We are actually not discussing Bill 4. I do not really think the question is particularly appropriate. To tell you the truth, we were discussing this about 15 minutes ago, and I said, going back a whole year, so much has happened, we have talked to so many people, I cannot actually remember. That is the truth. But if we want to go back into history as to why something was in Bill 4, I just do not think it is appropriate, because we are trying to deal with Bill 121.

**The Chair:** Ms Poole, I would try to bring the members back to speaking directly to section 14.1 as much as possible. I realize that all these factors have some relevance, but coming back to section 14.1 more directly would be helpful to the committee.

**Ms Poole:** Yes, Mr Chair. Section 14.1 talks about allowing for interest rate changes up to 2% if there is that change in financing costs, and it is very, very relevant to what happened in Bill 4, because in Bill 4 that is exactly what was allowed, an increase in financing costs related to interest rates. The government accepted it as a legitimate expense. So I think it is not only quite in order but quite relevant and we need to know why the government decided it was appropriate to put interest rate relief into Bill 4 and now it has revoked it for Bill 121. Was it because they did not understand that interest rates had something to do with financing? I certainly think from their lack of understanding on economic issues this is quite a distinct possibility.

**Ms Harrington:** I think that is a quite unfair comment. But I just would like to say that various things were changed between Bill 4 and Bill 121 because of the consultations during the past half-year.

**Ms Poole:** With reference to the consultations, could I please ask the parliamentary assistant, in her consultations and in the minister's consultations, what groups or individuals came forward and said that interest rate increases or reductions should not be considered? I would specifically like you to address those points.

**Ms Harrington:** I believe we had several hundred submissions, and I cannot tell you exactly which ones at this time unless we research it. But I think it is fair to say that this whole process of committee work is a process of listening to people and evaluating things and that is what the government is here for: with the help of our advisers, our staff people, to look at what is the best way of doing things, following our basic principles. I have no problem in saying this was a good decision and this is the way we have decided it should be, and it is our role to do that.

**Ms Poole:** As far as this government's following its basic principles is concerned, after I have seen it change its mind, waffle and betray people on the promises it made in the election, I do not think this government has principles. So I think that is a very moot point.

**Ms Harrington:** We would rather cooperate on this committee. We have had a history, I think, of good cooperation over the last year among the people who have been on the committee for a long time, and I believe the reason

the opposition is here is to try to improve this legislation. I would hope that would be your attitude.

**The Acting Chair (Mr Daigeler):** Do you still want to continue, Ms Poole?

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**Ms Poole:** Yes. I certainly agree with the parliamentary assistant's attitude about cooperation, and on a number of occasions I think I have displayed that. But I get very antagonistic, to say the least, when we are dealing with a piece of legislation which makes a lot of sense.

If the parliamentary assistant wants to go back to the tenants and explain to them why in this time of very low interest rates they are not going to be able to ask for reductions because the government has decided it is not going to consider interest rate changes, and if she is going to say to business, to which the government has promised greater cooperation and to listen, "We are not going to allow you to pass on interest rate changes," legitimate ones, arm's-length ones, then I think the government has a lot of explaining to do.

It is extremely frustrating when we cannot get a legitimate answer as to why this government campaigned saying it would not allow it, did allow it on an interim piece of legislation and now with the final legislation has disallowed it and will not give us an explanation of why. It is very frustrating.

**Mrs Marland:** I too share the concerns being expressed here about not getting answers to questions. The committee process with new legislation usually involves two parts. The first part is when the public is invited to come to committee and comment on proposed new legislation. It is at the point of where the legislation has in fact received first and second reading. It is legislation. It is still being proposed and possibly amended.

Where the process is breaking down on this bill we are discussing this morning is that this committee did hold public hearings. I was not a member of the committee at the time, but the committee did hold public hearings. I do not know how many of the members sitting on the committee this morning were part of the public hearing process, but I think the process becomes a tremendous sham by any government when there are public hearings held and the public comes to those hearings and expresses areas of concern with a piece of legislation.

**The Acting Chair (Mr Daigeler):** Are you sure you are addressing section 14.1?

**Mrs Marland:** I certainly am. There are many sections of this bill, including section 14.1, with which the public had a great deal of concern. The fact that this socialist government decides to ignore the input of the public through those public hearings means that we might as well forget about the committee process and especially that part of the committee process where we invite the public to come and tell us what its concerns are, because with a committee made up of a majority of government members, we the opposition, the Liberal Party and ourselves as Conservatives, have no possible chance of making any changes because the balance of votes naturally rests with the government.



In this case with section 14.1 we have a government which broadcasts that it wants to hear from the public. "Come and tell us your concerns." Now when we are trying to get passed an amendment which addresses one of the concerns from the public, not only are we not getting any support from the government for that amendment, we are not even getting answers to some of the questions. Yet this socialist government continues to ask the public for input.

I do not have it with me at the moment, but I will bring to the committee this afternoon an almost full-page ad where the government is asking the public for opinions. The ad also refers to what they have done to help the public. One of the referral categories in this ad happens to be rent control legislation. Under section 14.1, which we are dealing with now, we have an example of a very serious matter for both property owners and tenants. Where it becomes a serious matter for the tenants, for example, is when we ultimately lose the existing housing stock we have in rental accommodation.

Where we have a government ideology which promotes government ownership of housing stock, which obviously is what this bill will result in, because the private sector will not be able to afford to own rental accommodation, if this government chooses not to support section 14.1 as at least some area of help that can be given to property owners, the property owners will not exist in the private sector.

I happen to know from a conversation I had yesterday with a journalist on a prominent Toronto newspaper that a staff person at the Ministry of Housing was asked by this journalist: When the government takes over all of these buildings as they go on the market and there is nobody else who is able to afford to own them or maintain them, what will happen in the long term?

Of course there was no direct answer to that question, but there was a direct answer to the next question which was: In the non-profit sector where we have the government subsidizing non-profit units to the tune of \$27,000 a unit in this city when you could rent a luxury apartment for at least \$12,000, if you want to talk about luxury accommodation, why is the government building these non-profit units at such a heavy subsidy of \$27,000 a unit rather than just going out and renting accommodation at maybe \$10,000 or \$12,000 a year per unit? The answer was, "In 35 years we will own those units." That is somebody speaking for this Ministry of Housing.

This same Ministry of Housing will not support this Liberal amendment. I am quite sure no matter how well we argue it, they will also not support our Conservative amendment, which is the one that follows this, because they are bound and determined to put the private sector out of the housing business. That is what it is all about.

When a spokesperson for the Ministry of Housing says we are subsidizing non-profit units at \$27,000 a unit, even though it is not fair to the taxpayers of this province, nor I might add to the people who pay their own rents at \$600, \$700, \$800, \$1,200 a month, this government is saying to the people of Ontario, "We should be in the housing business." If that is not what they are saying, then we have got to get some answers to the questions being asked here this morning.

Why is the Minister of Housing doing everything to put the private sector out of business if he is not prepared to pick up that accommodation when it becomes available through bankruptcies? This is not something we are talking about five years, ten years from now; we are talking about the number of property owners who have gone bankrupt in the last two years. Maybe I should ask the Minister of Housing, since you would think he would care, do you have any idea how many property owners have gone bankrupt in rental accommodation in the last two years?

1130

**Ms Harrington:** Have you finished your comments? May I reply to many of your comments?

**Mrs Marland:** I am asking that one question at this point, Ms Harrington.

**Mr Abel:** On a point of order, Mr Chairman: I understand you are trying to exercise a certain element of latitude here, but Mrs Marland has been talking for the last 10 minutes and we are all patiently waiting for her to make some reference to the article we are discussing, and she has yet to do so. I would ask that you get her back on track and speak on the section before us.

**Mr Turnbull:** On that same point of order, Mr Chairman: I think it is quite clear she is talking to the impact of not accepting this amendment. What Mrs Marland is suggesting is very germane to this amendment.

**Mr Abel:** I beg to differ. Her comments certainly are not germane.

**The Chair:** I have been listening intently to Mrs Marland and offering a great deal of latitude, I believe, but her comments in my view have been germane to the subject, although she is stretching it at some points. I would ask Mrs Marland when she is discussing it to more directly discuss 14.1, but I understand that this is a far-reaching issue.

**Ms Harrington:** Mrs Marland asked exactly how many either buildings or units or land owners have gone bankrupt, and certainly I do not have that figure right with me. I think everyone in Ontario will know that many businesses are in very difficult situations. I am sure that is reflected in the landlord business as well as every other business across this province during the recession. To interpret any further than that the reasons for such, one cannot do. One cannot say exactly why.

I would like to comment on some of the other points Mrs Marland has brought forward.

First of all, this government does recognize and has stated all along during the past year that the private rental market in Ontario is a very important part of the affordable housing supply, and as such we value it and we believe it should be making a fair profit, as I have said.

She also commented that this bill, or rent review or rent control, is being consulted on at this time with regard to an advertisement. This copy of the advertisement lists several, up to 10 or 12, different bills and items that are being consulted on with the public at this time, and rent control is not one of them because we have dealt with that during the past year, at extreme length, opening up the



process to all tenants, landlords and any interested group. The time has come when we have to make those decisions.

The most important thing I believe Mrs Marland referred to was that she said, "The public consultation process is a sham"—or has been a sham—"in this committee work." I would like to say, very much to the contrary, that what this exact amendment we are dealing with, this section of the bill the government is proposing at this time, is a direct result of consultations with the public, and I would like to explain that to Mrs Marland.

In the green paper we put out late last spring, we omitted the interest rates being part of extraordinary operating costs, which had been in Bill 4, and we waited. We waited to hear what the private sector would comment on whether or not there should be a tracking and an adjustment for interest rates. Because of the results of that discussion after Bill 4 was put forward to the public across this province, I put forward to you, Mrs Marland, that why, after public consultation, it is not in the government's offer, why interest rate changes are not part of the pass-through. I would like to explain that very clearly to you.

**Mrs Marland:** When Ms Harrington says that, it is really interesting to hear her contradict herself. She says the reason interest rates are not here is because that is what the public asked for, through consultations.

**Ms Harrington:** No, not exactly.

**Mrs Marland:** Would you like to say it again?

**Ms Harrington:** I wanted to point out to you that the green paper was put out late last spring and the public consultation process after that was to find out what the public thought with regard to the many issues raised in the green paper, and also with regard to changes in Bill 4 to make it into long-term legislation. What I am telling you is that we waited to see if there was going to be private sector demand for interest rates to be included here. We wanted to discuss it. We wanted to hear what people thought. During that process we found it was not something the people with whom we consulted felt strongly enough that it should be in, or remain in, as it was in Bill 4.

**Mrs Marland:** Okay, so you are saying that the people with whom you consulted did not think interest rates should be included in the next piece of legislation?

**Ms Harrington:** I cannot tell you the exact names or dates or places with regard to the consultation. What I am telling you is a general overall picture of putting out the consultation paper and waiting and getting response to it.

**Mrs Marland:** I think it is great that you and I are so much on the same wavelength that you anticipated my next question. I had not yet asked you who the groups were you consulted with, but you answered, which I appreciated, Margaret.

**Ms Harrington:** Thank you.

**Mrs Marland:** The thing is that I do not think anybody can come into this committee and say "the groups we have consulted with" and then not be able to tell us who they are. I am sorry.

**Ms Harrington:** We have a list of hundreds of people.

**Mr Abel:** There are 150 presentations.

**Mrs Marland:** I do not expect you to have those names with you at this point, but if the ministry's reason for not including interest rates in this section 14.1 we are dealing with, if you are using the argument that you put out this green paper and asked the public and you did not hear back from the private sector that it was indeed something it wanted, that statement on its own is fair enough.

But then you went on to say "those groups we consulted with." I think that in fairness to the people of this province, we are entitled to know which groups the Ministry of Housing consulted with. I do not expect you to have a list today, but I am asking the Ministry of Housing to provide us with a list of the people with whom it consulted on this particular matter. If you are talking about your controlled, closed-door public hearings on the green paper, then that will make it even more interesting because I know the member for Eglinton attempted to attend those public hearings on the green paper in her riding. I certainly attempted to attend the public hearings on the green paper in my—

**Mr Abel:** You were there for the whole time.

**The Chair:** Order, Mr Abel.

**Mrs Marland:** Mr Abel, perhaps you would let me finish my sentence.

**Mr Abel:** You said, "attempted." You were there.

**The Chair:** Mrs Marland has the floor.

**Mrs Marland:** You really are being a little intolerable. If you would let me complete my sentence instead of going off and foaming at the mouth in a fit, I will tell the rest of the committee what I did. Perhaps before I talk about those public meetings on the green paper, I should make sure that I am on the same subject the parliamentary assistant was referring to. When you said that you consulted with the public and that there were a number of groups you heard from, are they the groups that came to the public meetings that were advertised on the green paper or did the ministry consult with other groups apart from those meetings?

1140

**Ms Harrington:** I would like to make that as clear as possible. There were just so many consultations I was involved in, but what I am speaking about here is that we sent out bulletins to all the tenants and to many others across the province last spring called Rent Control Options. People were asked to send back their opinion.

I would also like to let Mrs Marland know that when there were published advertisements in all the newspapers across Ontario, and I believe this was last June but I stand to be corrected, there was a huge volume of response and phone calls from everyone. I would not categorize whether they were tenants or landlords, but any interested person. It was the difficult job of the clerk of this committee to try to get as many of these people as possible to come to meetings, either here, televised, open, public, in this building or in other situations similarly open to the press and public across this province when we travelled. Those are the meetings I am referring to. I am not talking about any meetings particularly held here in Toronto. Some were open and some were by invitation, but I am talking about the process of this committee. That is certainly open and public.



**The Chair:** Perhaps to be helpful, we are speaking about section 14.1 directly. To be fair, I think I should restrict the discussion to what consultation occurred regarding this particular section rather than the entire consultation process. For the purposes of dealing with section 14.1, I think it is in order to discuss it, but we should discuss the consultation revolving around this particular issue.

**Ms Poole:** Mr Chairman, on a particular point.

**The Chair:** Yes?

**Ms Poole:** If I could just add a further request to what Mrs Marland has asked Ms Harrington, not only do we want a list of those parties you consulted on the interest rate changes, but we would like a list of those who supported including it in the legislation and those who did not. We would like very specifically this section 14.1 elucidated, in a list of those who did support interest rate changes being in, the names of the groups and whether they supported it or not.

**Ms Harrington:** In response to asking for a list of who and on which side they came down, I am not entirely sure that is appropriate because every member of the committee has everything we heard and all the submissions given in writing. Every caucus, I am sure, has all the submissions on file. To ask our research staff to go back through every one of them—I know there was a summary put out by our research staff on various issues at the end of the consultation, so it might be appropriate if we got hold of that. But this is something every member on this committee would have access to already.

The point I want to make is that we have gone through all this. We have the summary, and for the people of Ontario it is time that we, with all this in mind, make some decisions.

**Ms Poole:** The reason we are pursuing this is that Ms Harrington stated that one of the reasons they had changed their mind and not included it in this legislation, when they had included it in Bill 4, was the consultation process. We do not have a copy of the briefs submitted during that public hearing consultation process. I went to the meeting in my riding of Eglinton. I was not allowed to speak, but I was allowed to sit there. Many people did not have written copies, but the Ministry of Housing had a written summary for every witness—the member from the Ministry of Housing was sitting beside me—and what points they made. They surely have tabulated this information on every issue as to how many and who is supporting the various proposals.

What we would like is a list of the people in that consultation process who, with reference to section 14.1, wanted interest rate changes included or who did not. That is all we are asking. We do not have access to this information, and I do not think it the least bit unreasonable for us to ask to have it at this time. It is very important.

**Ms Harrington:** What I would like to point out and I believe I have already pointed out very clearly is that the process of this committee, the standing committee on general government, which is dealing with both Bill 4 and Bill 121 and all the public submissions to this committee, is that every member of this committee has a copy of all

those submissions. I am sure you have a copy of the summary of that, with the recommendations on each of the issues. That you already have.

**Ms Poole:** I just point out we are talking about two different things. I am talking about the public hearings which Mrs Harrington referred to and Mrs Harrington is talking about the committee hearings. The committee hearings we do have access to, and a large number of those actually asked for this to be back in the legislation. I am talking about the part we do not have access to, which were the public hearings the ministry and the government have written documentation on. We do not have a copy and that is what we are requesting, not the committee information but the hearing information.

**Ms Harrington:** I think when I began and we talked about the consulting process, what I was referring to was the work of this committee.

**Mrs Marland:** That is not what I was asking about. The point is the importance of section 14.1. If there is a committee member this morning who does not understand the importance of 14.1, we are in worse trouble than I thought we were. I am quite confident the opposition members understand the significance of this amendment that is before us. If nobody else understands it, then there is nothing we can say that can change that understanding.

When I said, "Who is it who has said this is not necessary?" the answer the parliamentary assistant gave me was, "We put out a green paper, we had public consultations, da-da, da-da, da-da." That is perfectly true, but if she is saying that on a basis of those public consultations—and I am not talking about the committee presentations at this point. It is perfectly true that we have copies of all the committee briefs. It is also perfectly true that in those committee briefs a large number of people said they were concerned that this was now being eliminated, that the opportunity to deal with interest cost fluctuations that was included in Bill 4 is now no longer available under this legislation.

The government has changed its mind between its own Bill 4 and Bill 121. All we are asking this morning is, on what basis have they changed their mind? Is it their own ideology solely? If they say that, fair enough. If they want to say, "We don't believe that interest change fluctuations should be in this bill," then they should tell us that. But the parliamentary assistant is not saying, "It is what we believe." The parliamentary assistant is saying, "This is what the public has told us through our public consultation process."

We are simply saying, "All right, then can you tell us with whom you consulted?" The parliamentary assistant's answer to that question was, "We had hundreds of groups"—or whatever her words were—"a large number of groups, and I can't tell you who they were." First of all, we know the ministry can tell us who those groups were because, as the member for Eglinton said when she attended a meeting, as did I—and when I said I attempted, I would like to finish that explanation since it was a point of order, Mr Chairman.

1150

When I attempted to attend the meeting in my riding in this so-called public consultation process, I was told by the ministry staff that I was not invited, therefore I could not



attend. I said, "Are you telling me as the member for that riding I am not entitled to attend a public meeting in my riding?" They said: "That is so. We have a list of members of the public who have applied to attend and they are now as a result of their application invited to attend."

Then I said, "What about if I just show up?" They said: "We would advise that you don't just show up because you're not invited and it's not a meeting for members of Parliament to participate in. It is something for the public." So I said, "But I would like to hear what my public in my riding are saying about this socialist government legislation, or how can I represent their interests when we deal with the legislation?" which is what is happening today.

When I was given those answers from the minister's staff, I waited for a week. By the way, of course, as members we were not informed of the dates or the places of those hearings. All of this is on record in Hansard in the House because there were a number of questions from both parties on our concern about the elimination of the right of members to attend those meetings. When I found I was not going to be allowed to attend the meeting, I decided I was not going to let that lie. In fact, I recall in the House Elinor Caplan actually went to the meeting in her riding and was refused entry. Can you imagine, as an elected representative, she was refused entry into the meeting in her own riding?

As Mr Abel correctly says, I did attend the meeting he chaired only in the end, because I chose to make my appearance and let them throw me out. Wisely, they chose not to have the Third World War with me at that meeting, and I was permitted to sit in on that meeting and monitor the proceedings. Because I did that, I know minutes were taken of every presenter at that meeting by ministry staff. There were two people actually recording what was being said.

The ministry has a list of the people who participated in the discussion of this legislation based on the green paper public meetings. You have a list of who attended. You have a list of what was said, I assume, through the minutes that were taken, and you are saying there was no support for section 14.1.

**Ms Harrington:** May I respond?

**Mrs Marland:** No, just wait till I finish, because you may like to answer the final question. You said there was no support for section 14.1 as a result of those public hearings. What I am asking you—

**Ms Harrington:** I would say not strong enough support.

**Mrs Marland:** You are changing your answer.

**Ms Harrington:** Would you like to—

**Mrs Marland:** You cannot give us different answers. I am sorry, Ms Harrington, but you cannot say, "There was no support for recognizing the concern about interest rates as in section 14.1," and then say, "Well, there wasn't strong support."

**Ms Harrington:** I will check my exact wording.

**Mrs Marland:** All right. If you want to be more specific, I will be more specific. Was there even one expert who spoke to the ministry during this public deliberation—and when I say an "expert," I am talking about

somebody from a financial institution, a banker. I am not talking about the poor property owner. I am talking about an independent third party here who would, out of public-service-mindedness, want to tell the ministry what a calamity this legislation would create if there was not an amendment like section 14.1 that would recognize interest rate fluctuations—would you tell me if there was even a single person who would be in that category of financial expert who had spoken to the ministry about his concern about what would happen if it was not included?

**Ms Harrington:** Certainly the record of who spoke to our committee and what their qualifications were is a public record. I could certainly ask anyone to find that out.

**Mrs Marland:** Could we have that list then as requested?

**Ms Harrington:** I would like to—

**Mrs Marland:** Excuse me.

**Ms Harrington:** —respond to you.

**Mrs Marland:** Then may we have the list to which the member for Eglinton is referring?

**Ms Harrington:** Yes. May I?

**Mrs Marland:** Yes.

**Ms Harrington:** Thank you. A couple of different areas I wanted to touch on. First of all, I remember distinctly with the minister—this is so long ago now it seems, possibly last March or so—meeting with the people in the field. We did have bankers there. I remember expressly talking with some of them. They were directly advising the minister with regard to the legislation proposed at that time, the green paper. Both Mrs Marland and Ms Poole have asked for a summary of the ministry's consultation last spring. Is that correct?

**Mrs Marland:** Yes.

**Ms Harrington:** That has been printed and we can provide it this afternoon, if that would be helpful to you.

**Mrs Marland:** It would be very helpful. Does that include the list of the participants, the presenters at those public hearings?

**Ms Harrington:** I think that would be attached on the back, but I would have to check to see. It does not have a complete list.

**Mrs Marland:** We do not need it by this afternoon obviously, but can we have by next week the list of the participants at those public hearings on the green paper?

**Ms Harrington:** I hate to give huge amounts of work. I want to tell you that there are many factors, of course, to the government's decision, as with any decision. I was only trying to be as helpful as possible by explaining as many of the reasons as I could think of. The consultation process is one of them but certainly not the only reason. At the beginning of this discussion I also said it is a matter of our basic principles. I explained over and over that the landlord is responsible for the financing of the building.

I think it is perfectly relevant, and I am sure everyone in Ontario would agree, that this government has to make decisions and is perfectly able to change its mind and to make these decisions. I am not quite sure of the relevance



of going into all the, say, psychological factors of why the government did this. I think it is more appropriate that this committee deal with the merits of what is written here in section 14.1, whether you feel it is appropriate at this time.

As to the behind-the-scene sort of psychological reasons why a government would make this decision, I do not think it is entirely appropriate. It is more appropriate that we deal with what is actually written here, the pros and cons of whether it will work in Ontario.

**The Chair:** Thank you. On that note, it being 12 of the clock, we can pick up this discussion on the Liberal motion on section 14.1 at 2 o'clock this afternoon. Committee adjourned.

The committee recessed at 1200.

## AFTERNOON SITTING

The committee resumed at 1411.

**The Chair:** The committee will recall that when we adjourned at noon we were discussing Ms Poole's motion, section 14.1. Mrs Marland had the floor.

**Mrs Marland:** There is some difficulty when we switch horses in midstream, because I was asking questions of the parliamentary assistant, who is back sitting as a member of the committee, and now the minister is back in the position of answering the questions. In fairness to the minister, it may be that these questions will still have to go around to Ms Harrington, because it was her argument I was dealing with.

Under section 14.1, I was discussing the issue of why it is so important for any government to recognize that fluctuating interest costs are not within anyone's control. Therefore, someone who has a building financed—I do not know, because I do not own rental residential property, but I am sure that for the most part they are not short-term mortgages. When a mortgage has to be changed or renewed, the property owner has to deal with whatever the current rate of interest is depending on the rate fluctuation, which is beyond the control of anyone.

When asked about this this morning, when asked why the Bob Rae socialist government had included interest rates in Bill 4, its own rent control legislation, and had chosen to exclude it in its latest rent control legislation, Bill 121, the parliamentary assistant said it was quite relevant for government to change its mind. She said, "It's a matter of our basic principles."

I think she is perfectly right in her opinion that it is quite relevant for the government to change its mind. I will not discuss what the socialist government's basic principles are, because of course its basic principles are very different from mine or those of my party. She said something about there being no psychological reasons. I did not understand what she meant by that. But as to her answer about it being quite relevant for government to change its mind, if we accept that premise for the government's position on section 14.1, that raises a question in my mind.

They have been the government only 17 months. They campaigned to be the government with one position. Then they brought in Bill 4, which was the opposite position to that which they campaigned on. Now they have brought in Bill 121, which is opposite to the position they had in Bill 4. So we have an example here that yes, this government does change its mind. It changed its mind from its campaign promises and then it changed its mind in two concurrent pieces of legislation.

I have to ask, is there any likelihood at all that this government will change its mind again before Bill 121 is proclaimed? Is it possible that we hang on by our fingernails to that slight, thin hair of hope, that there might be some sections of this bill they might change their minds about before it proceeds to third and final reading?

**Ms Harrington:** I want to make a little clearer what I said. I was saying that it is perfectly legitimate that this government makes decisions. Those decisions are based

on principles and on the consultation process this committee went through and that the government has initiated through the ministry. I think it is clear to everyone how that process works. That is democracy. The government is elected to make decisions based on its philosophy. That is why they are elected in that number. Then certainly they have to carry through the process of this standing committee. I think it is clear to everyone what has happened over the last year in the decision-making. It is a very valid process.

**The Chair:** Just to be clear, from now on I will allow questions to the minister, but unless it is agreeable we generally place questions to the minister, not to other members of the committee.

**Mrs Marland:** I was actually trying to be courteous, because I could hardly expect the minister to answer a question we were in the midst of with the parliamentary assistant this morning.

This morning we were discussing our concern that section 14.1, dealing with interest rates, is the very section that will be tremendously pertinent to whether the people in the business of property ownership for rental housing are going to stay in business. I think my colleague the member for York Mills expressed it in a most articulate, capable way this morning for those people who might not otherwise clearly understand this matter.

I note that Mr Mammoliti is laughing. I suppose he laughs out of embarrassment because he may not understand the matter and was not able to be here this morning, unfortunately, at the point when Mr Turnbull was explaining how pertinent is this section before us at this moment.

We talk about businesses in this province going out of business, but then we talk about pushing businesses out of business, which this section of the bill will do, without question. If there is not some leeway for property owners to move when their financing is impacted by interest rates they have no control over, if we do not in this legislation make some recognition of that, then without question we will be pushing these property owners who need new financing out of business.

I know, from the comments that have been made in this committee, that the socialist government does not care about pushing people out of business. We know that because of the statements that have been made by the members of this committee about their disdain for property owners, even, in some instances, their disdain for tenants. We have had the socialist members of this committee refer to tenants as peasants, a very derogatory, disgusting reference—

1420

**The Chair:** Please speak directly to section 14.1.

**Mrs Marland:** We are concerned when the ideology of the socialist government puts land owners, property owners, out of business, and they do not care; that is fine with them. It is not fine for us. It is not acceptable to the Progressive Conservative Party of this province that property owners are put out of business, because the people who live on their properties are equally affected. I am speaking



about the people who live in rental accommodation around this province when I express my concern that if the government chooses to ignore section 14.1, a Liberal amendment, which is very similar to the PC amendment which follows, if it chooses to ignore these amendments and not support us, what happens is that we pass another housing bill, to use a colloquial term, that in fact works to the detriment of providing housing in this province. It is totally destructive, because the amount of rental accommodation will eventually be drastically reduced because there will be nobody in the business of providing rental accommodation.

We care about tenants in this province. We care about those people who cannot afford to own their own property. In spite of the fact that the current minister says that 40% of the population lives in rental accommodation and she does not see anything wrong with that—

**Mr B. Ward:** On a point of order, Mr Chair: Is the member eventually going to get to her question? I am sure the minister is anxious to clarify and answer any questions. I hope the member will quickly derive some type of question out of her rambling

**The Chair:** I am certain Mrs Marland will take your thoughts into consideration. If you wish to be on the list, I could add your name.

**Mrs Marland:** It is interesting that the government member for Brantford does not yet understand the committee process. I might say for his benefit, in response to his point of order—which of course was not a point of order; he does not understand what a point of order is or he would not raise one that was not—that I am not compelled to ask questions, but I do have the privilege of speaking on behalf of the people whose best interests are not represented in this piece of legislation that is before us today.

In any case, the fact is that questions have been asked of this minister and this ministry for some time now to which we have yet to receive answers. People are going to be out of business because section 14.1 will not be supported, property owners who go for new financing by necessity, and there is no consideration or recognition in this bill of the fluctuation of interest rates. When they go out of business, everybody suffers. Whether or not the socialist government cares about tenants, we do. When the buildings become run-down and obsolete and finally people have to walk away from them because they cannot afford to own them any longer, it will be the tenants who will be out on the street with nowhere to live.

This morning we had an answer from the parliamentary assistant, and I made a note of it. She said, "Many businesses are going out of business in Ontario today," a perfectly apt statement. Yes, many businesses are going out of business. Is it not rather interesting that a government, which chooses to ignore section 14.1, not support it, is quite happy to sit there and put more people out of business. That is what we are talking about.

We think it is a disgusting sham for a government in office to be marching around this province asking the public for input, getting that input and then ignoring it. Then we have the Premier wanting to spend \$50,000 to speak about the state of the economy in this province when at the

same time his Housing minister probably has not even told him she is not supporting section 14.1.

In fairness to Premier Bob Rae, he should be told that in this very committee on this very day his government members are going to vote against an amendment, which will have a devastating effect not too far down the road, possibly within the next 12 months, on a number of business people, property owners in this province.

If the answer is, "Many businesses are going out of business, and that's why we're not going to support this bill," I think the public will certainly understand that callous indifference to its welfare, that callous indifference to the future of this province, because every time any business goes out of business, the buying power, therefore the manufacturing power and the whole thrust that drives the economy of this province is affected. If the government fails to recognize that interest rates are something beyond the control of an innocent property owner, then its comprehension of what drives business in the economy is obviously worse than we think it is.

I want to differentiate here, because I want to be very clear. I know for a fact that there are excellent, competent and brilliant staff in both the treasury and the Ministry of Housing, who I am sure have given advice to the Treasurer, the Premier and to this Minister of Housing. But if they are directing their members to vote against section 14.1—and we have not heard their members speak on section 14.1 except through the parliamentary assistant—then I guess we have to assume that although the advice, the counsel and the wisdom of treasury staff are there for them to draw upon—I do not know whether the Ministry of Housing has economists included in its numbers, but certainly it would not take very much common sense.

I am not an economist. I can figure out 14.1. If interest and financing costs fluctuate and there is no recognition of it in this bill, I can understand very easily what that means: Tenants are going to be out on the street and we are going to be throwing property owners out of business. But if the minister chooses not to understand that, we come back to a question which I think she might like to answer. I guess Ms Gigantes was not the minister when Bill 4 was passed. Was it Mr Cooke?

1430

**The Chair:** Mr Cooke.

**Mrs Marland:** Ms Gigantes, were you the minister when Bill 4 was passed?

**Hon Ms Gigantes:** Mr Chair, I was not. You were right.

**The Chair:** Thank you. It happens occasionally.

**Mrs Marland:** Would you have any explanation, Ms Gigantes, why the concern we are addressing in 14.1 is not included in this bill and was included in Mr Cooke's bill?

**Hon Ms Gigantes:** Bill 4, as you know, is not a stand-alone bill; it is an amendment to the existing legislation. It also, among other things, provides what will happen to certain properties at certain stages of the operation of Bill 51 when Bill 121 takes effect. Therefore, because we were looking at some properties which retrospectively will have consideration made at a point when they were in certain processes under Bill 51 as Bill 121 swings into operation,



we adopted some of the measures that were in Bill 51. Bill 4 was an amendment to Bill 51.

When we come to Bill 121, the bill which is now before us, we had gone through a long, careful public consultation. We had also entered into discussions with various interest groups, and we came to the determination that we would not allow the cost pass-through of interest changes to landlords on an application. One of the chief problems tenants had named during the discussions that were held across the province in preparation for Bill 121 was that they were being asked to shoulder the financing cost of the buildings where they rented, and it is one of the elements we have decided will not continue under Bill 121. That is why there is a difference.

**Mrs Marland:** I think I have made the point about why 14.1 is so important and why we are supporting the Liberal amendment and why my amendment, which follows, has the same intent. Now that the minister is back, though, I would like to reconfirm that there will be staff in attendance at a future meeting of this committee while we are still in deliberation of this bill to tell us about the job description for rent officers and the applicants' qualifications for the position of rent officer.

**Hon Ms Gigantes:** I did suggest yesterday that we might usefully look at that information when we got to part IV of the bill. The way it goes now, it looks like we will get to part IV of the bill, along with 1,500 other clauses—I should not exaggerate, should I?—many other clauses, on the last day of the discussions which are scheduled for this committee to handle this bill, but the offer stands and ministry staff are aware and quite prepared to come and enter into that discussion.

**Mrs Marland:** I wonder whether, to facilitate this, and as it involves drawing ministry staff out of their offices to attend this meeting, we could have agreement on the committee that we would deal with the section part IV comes under. Is it section 87? You told us yesterday what it was.

**Hon Ms Gigantes:** I believe it is section 116 on page 68.

**Mrs Marland:** Do you think we could consider scheduling the appearance of ministry staff to deal with the job description and the eligibility of applicants for the position of rent officer that comes under the powers and the responsibilities assigned to rent officers under section 116?

**The Chair:** The Chair is obligated to deal with sections in the order in which they appear unless I have unanimous consent of the committee. In that case, the committee can do as it wishes. If the committee wishes to follow your suggestion, that would be fine, but as section 14.1 does not specifically address that issue, would you mind if we took that particular issue up after we have completed subsections 14.1(1) and (2)?

**Mr Mammoliti:** I sat here and kept quiet for the most part in listening to Mrs Marland, but I am compelled to respond to some of the things she has said, only because I am devoted to rent control. I am glad I have been a part of the process and I am proud to be a part of this government, more specifically when we deal with rent control. I am glad I have been here from day one.

I would like to talk about what Mrs Marland said in relation to our campaign and our campaigning. She mentioned that we changed our mind with Bill 4 and with Bill 121. Let me tell Mrs Marland that we promised to consult. We promised to utilize the system a little better, to utilize these committees a little better and have an open mind, and to admit when we make mistakes and when we do not. What I understand from Mrs Marland is that she would prefer to go back to the way it was, where government would go around and waste taxpayers' money with this sort of committee and not make any changes and say, "Sorry, our mind is made up and that's the way we want to deal with things."

I can say to Mrs Marland that this government will not do that. In relation to Bill 4 and to Bill 121, where we have changed our mind we have done so for a reason. We have consulted. We have listened to business. We have made amendments where we feel perhaps we may have made mistakes in the past. We are not afraid to change things, as opposed to your government and the previous government.

Mrs Marland neglected to mention that one of our promises in the election was that we would consult and that we would change our stance, if necessary, after we consulted with people. It is not a waste of time. If she is telling this committee that she would rather a government go around the province and not change its mind if it has been convinced otherwise, then I am appalled and I am disgusted. Frankly, she should think of perhaps even resigning her post if that is how she feels government should be run, because that is wrong and I do not think the public wants that. I think the public wants government to change.

In terms of section 14.1, we are consulting, we are asking, we are looking to change, if necessary. We are voting—the democratic way of doing things—and we are debating, something I think we are all very good at. That is the way the process should work in regard to section 14.1.

1440

As are some of the reporters who hang around the hallways in this building, Mrs Marland is wonderful at putting things way out of context. She said this government has called tenants peasants. I say to you, Mr Chair, that is far from the truth. If you recall, when the topic of peasants came up we said it was her government and the government previous that have put tenants in the position of being peasants. It is those two governments that have done the damage, and for her to say that this government has called them peasants is utterly ridiculous. She should be ashamed of herself for putting things out of context.

She mentioned interest rates—

**The Chair:** Which is useful. That is what section 14.1 relates to.

**Mrs Marland:** On a point of order, Mr Chairman: In the Hansard of Thursday, December 5, under the name of Mr Mammoliti, it reads: "You still want to kick and punch those peasants, and I am not going to put up with it." It was Mr Mammoliti's own—

**The Chair:** That is not a point of order. Thank you, Mrs Marland.



**Mr Mammoliti:** This is wonderful. She has all the minutes. She neglects to read, perhaps, the paragraph before that where I tell her that she loves to punch tenants and to kick tenants and to keep them under the foot. Remember that wonderful Robin Hood story I told you about as well. That is what I was talking about before I was rudely interrupted, something she loves to do on a regular basis in this committee to waste time. I was talking about interest rates, and I can relate it to December 5 as well, in that interest rates are a way of kicking and punching tenants.

For Mrs Marland, and the Liberals as well, to say it is the right thing to do to put high interest rates on the backs of tenants and have them pay, I would say that is wrong. You are only keeping tenants further away and putting them under your foot, *per se*, because obviously they are the ones who have to pay for the mistakes landlords make when they invest.

They give an indication in their speeches of how wonderful landlords and their business decisions are. I wonder how good a landlord is if he has chosen to invest in a building when the interest rates are so high. Is that the right thing to do, and is the intent right? If landlords can put it on the backs of tenants and know they can put it on the backs of tenants, is it morally right?

What is an investor? Is an investor someone who cares about tenants or someone who is a business person, or both? I say both: someone who cares about business and who cares about the tenants. I do not think it is right for landlords to put tenants in the position of paying for their bad investments. Often, when we talk about interest rates we are talking about bad investments.

That has gone on long enough, in my opinion, and I am proud to be a member of a government that will say: "Enough is enough. We are representing you." Relating it to the bill and specifically section 14.1, this is just another way of saying: "We're representing you and we believe rent control is a necessity. In future, landlords will not be able to increase your rent because of high interest rates." That is not morally right. The moral aspect of it is a big issue with me.

When landlords come to this committee and say they care about their tenants, when it comes to interest rates we have to think twice about what they are saying. Do they care? If they care, they would agree with the government and say they should not charge the tenants for high interest rates.

On those three points Mrs Marland should think twice before she rambles on, as my colleague said earlier. Before the opposition members talk about rent control, they should look at every aspect and every decision we have made and the reasoning behind the decisions, before they ramble on. The fact that Mrs Marland continues to put things out of context and exaggerate is something I can deal with, because I have the right to speak in this committee and the right to interject if I feel she is saying something wrong. I can handle my own when it comes to this sort of thing, and I continually do it, as you know.

**Mrs Marland:** Like you did at the Conroy Hotel.

**Mr Mammoliti:** Like I did at the Conroy Hotel—absolutely right. I used the fact that I worked at a particular

place for a few years and I referred that to the way her government dealt with tenants back then. I still say it is a good example. Yes, in terms of section 14.1 specifically, I would say her government, and the previous government for that matter, dealt with tenants as a bad doorman in a bar would deal with a drunk. That is why I referred to the Conroy Hotel back then, as she mentioned.

I do not particularly want to get into the story again, but we talked a little bit about kicking and punching and how her government loved to do that to tenants and treat them like they were something out of this world.

**Mr Morrow:** They did not do that.

**Mr Mammoliti:** Oh, yes, they did do that. They did that on a regular basis through their legislation and through the way they dealt with their tenants. I say there is no difference between them and how a bad doorman would deal with somebody who has had too much to drink. There are some doormen who take the time to talk with somebody who has had a little too much to drink and perhaps buy them a taxi and get them home and do the right thing, and then there are doormen who really do not care and put them through windows and doors and boot them out as quickly as they come in.

I refer to the Conservative and the Liberal governments as the bad doormen. Nowadays they would be called doorpeople or doorpersons, because there are women doorpeople as well, and they do a wonderful job.

**Ms Poole:** On a point of order, Mr Chair: This is very interesting, I am sure, but could we go back—

**Mr Morrow:** I am enjoying this.

**Ms Poole:** This is very sad; Mr Morrow is enjoying this. Could we please go back to section 14.1 and not talk about doorpeople?

**Mr Mammoliti:** Mr Chair, before you make a ruling, I agree I strayed somewhat.

1450

**Mrs Marland:** On the same point of order, Mr Chairman: I am quite happy to allow Mr Mammoliti to continue because I think it is great that the people see the kind of people they have elected.

**The Chair:** Mr Mammoliti knows he should continue speaking to section 14.1.

**Mr Mammoliti:** Yes, people have seen you long enough.

**The Chair:** Through the Chair, Mr Mammoliti.

**Mr Mammoliti:** Through the Chair, of course. The people of Ontario have seen people such as Mrs Marland long enough. They have seen her continually through these debates, because she tries to take up all the time on camera and all the time with committee. I have got phone calls—

**The Chair:** Section 14.1.

**Mr Mammoliti:** On section 14.1, Mr Chair, because people such as Mrs Marland take up all the time, we cannot properly debate things like section 14.1. Talking about interest rates, I gave you the bouncer scenario, Mr Chair. I think it is a good one. I think people can look at it and say, "You know, he's not off the wall. He's telling the truth."



When landlords want to charge the tenants because of bad investments, I call that the bad doorperson effect. They just want to do their thing.

She also mentioned "peasants" at one point. I have to bring that up again because I think this scenario is a good one as well. The Robin Hood story is certainly one people can relate to.

**Ms Poole:** On a point of order, Mr Chair: We have already endured the story of Robin Hood as told by Mr Mammoliti. Do we have to do this again?

**The Chair:** I am sure Mr Mammoliti is going to relate this directly to 14.1 and maybe compete for the Academy Award.

**Mrs Marland:** Mr Chairman, on the same point of order raised by the member for Eglinton, I think it is worthwhile for Mr Mammoliti to raise Robin Hood again, because this time he may get the story right.

**The Chair:** Mr Mammoliti has the floor and will continue his discussion of section 14.1.

**Mr Mammoliti:** We were talking about peasants and how in the olden days the governments treated peasants badly. They were only concerned about the taxes. They would put them under their feet and would not care. I talked about Robin Hood and how he did the right thing, in my opinion. He got back at them. He did things that individuals would only dream of.

**Mrs Marland:** Like what? Tell us what he did.

**Mr Mammoliti:** He would take on those individuals who only cared for themselves and about getting rich and did not give a damn about anybody else. That is what Robin Hood did. I am proud of Robin Hood, I am proud of this government and I am proud of how we are dealing with rent control. We are, in essence, being a Robin Hood per se, and I am glad we are.

**Ms Poole:** On a point of order, Mr Chair.

**Mr Mammoliti:** On 14.1—

**Ms Poole:** Mr Chair, Mr Mammoliti thinks that by saying the magic words "on 14.1" every 10 minutes this keeps him on the topic. I guess I should be grateful; at least he did not go into Friar Tuck this time; we were spared that. Could we please get back to 14.1, which deals with interest rates, and not the Sheriff of Nottingham?

**The Chair:** Mr Mammoliti, I think you understand you should be speaking directly to 14.1.

**Mr Mammoliti:** I would love to relate to investments and 14.1 as well an example I brought up yesterday, the building I most recently visited in my riding, a building that has been totally neglected by the landlord, in my opinion, a building that perhaps one day somebody may take over. The interest rates may very well skyrocket and somebody may want to charge the tenants in that particular building the amount he or she would be charged with the interest rates. That is just a prime example of the abuse that could happen with a building that has been neglected. There are a lot of buildings like that; a lot of landlords have neglected buildings. It is really tough not to blame the previous governments. I do not like doing that, but it is really tough: The previous governments have allowed this to happen.

It is time it stops and it is time that, through legislation, we force it to stop. I see my colleague from Don Mills is laughing. It is time it stops. We hear from business, who say to us that we are doing this to get at them so they cannot make a profit and that by doing this we are going to stop everything from happening in Ontario; their Ontario is going to be the worst place to live because of our government. I cannot accept that, especially when the Conservatives and individuals I know of who are Conservatives are going around this country and this province saying to business, "It's time to get out."

On the one hand we are saying it is time to unite and be Canadian and stick together and on the other hand we have individuals saying to business, "Get out because of the government." Where are your priorities, I ask those people. If your priorities are with Ontario, as you preach, then you would not be telling people to leave the province, you would not be telling landlords to leave the province, as you are doing, and you would not be leaving the room as well.

**Ms Poole:** On a point of order, Mr Chair: Could the record please show that the minister would also desperately like to leave the room but is refraining.

**Hon Ms Gigantes:** That is not true.

**Ms Poole:** You just like laughing at him—no, with him.

**The Chair:** Mr Mammoliti, you will direct your comments as closely as possible to 14.1.

**Mr Mammoliti:** When we talk about interest rates and investment, this is a serious problem. We cannot ignore this; this is a serious problem. We have individuals who are claiming they care about Canada and Ontario telling business to leave. I do not think that is funny. It is something we should take note of and I think the public has a right to know. When they hear the people who are speaking, they should take note of what they are saying and who they care for.

Mr Chair, I will leave it at that and perhaps let some others comment and maybe tell us how much they would love landlords to stay in Ontario as opposed to telling them to leave.

**Mrs Marland:** What is the alternative from you?

**Mr Mammoliti:** It was great. For a while I was able to speak without interruptions, but now that Mrs Marland is back—

**Mrs Marland:** I am helping you. What is the alternative?

**Mr Mammoliti:** —she is doing the natural thing, and that is to be rude.

**Mrs Marland:** I did not leave, by the way. I would not have missed this for a minute.

1500

**Ms Harrington:** I briefly want to set the record straight. Some time ago Mrs Marland quoted me as saying many businesses are going out of business. To go from that statement to implying—I believe this is quite clear on the record—that this government wants to put people out of business is, I feel, utterly inappropriate and not helpful to our working together and not helpful to this committee. I ask her to refrain from this type of non sequitur.



**Mrs Marland:** On a point of privilege, Mr Chair: May I respond?

**The Chair:** On a point of privilege, Mrs Marland, but it better be.

**Mrs Marland:** The parliamentary assistant said, in response to our point that property owners were going out of business—

**The Chair:** No, Mrs Marland, that is not a point of privilege. It may be a point of clarification, but it is not a point of privilege. Ms Harrington has the floor. If you wish to be on the list, I can put you on the list.

**Mrs Marland:** Yes, please. I would appreciate that.

**Ms Harrington:** I felt it was very clear, just to make sure that maybe Mrs Marland does not need to respond, that what I said in no way led to what she interpreted from that. She implied that this government had motives with regard to business. I think what I have said is clear.

**Ms Poole:** I had not planned to speak too much this afternoon, because I am sure my voice is not particularly pleasant to listen to, but there were a couple of points Mr Mammoliti made which I have to respond to.

First of all, he made the statement that when you are talking about interest rates you are really talking about bad investments. Perhaps I should point out to Mr Mammoliti—

**Mr Mammoliti:** On a point of privilege, Mr Chair: I did not say, "We are really talking about bad investments."

**The Chair:** That is not a point of privilege. That may be a point of clarification but it is not a point of privilege.

**Ms Poole:** Perhaps I could clarify for Mr Mammoliti that it is the Bank of Canada that sets the prime rate from which interest rates flow; in fact, it is government policy that sets the interest rate. It is certainly not within the landlord's purview. When you make outstanding statements such as interest rates being bad investments, that is totally erroneous and gives people an impression which is not at all accurate.

The second thing Mr Mammoliti talked about—all I have been able to gather after half an hour of his speaking is two points where he actually did refer to section 14.1—was that his government went and consulted around the province, which is why it has made changes to the legislation, and that people want the legislation. Of course the ministry has not had time yet to provide us with the results of the public hearings it conducted.

Interjection.

**Ms Poole:** Oh, we have them. Thank you, Mr Chair. When we look at that we will find out how the public responded.

I did have the opportunity over the lunch-hour to go through the legislative research summary of the bill and those who did refer to interest rate changes. The vast majority of those who made presentations on this issue were very much in favour of having it reinstated in the act. It included groups such as the Ontario Chamber of Commerce, the board of trade and the Ontario Home Builders' Association, to name a few. I specifically took out the Canadian Bankers Association brief because this morning,

when we were asking Ms Harrington about it, she did not refer to it when she was talking about people who had recommended changes. I would like to quote the CBA for you from the August 27 Hansard. This specifically relates to section 14.1.

"Our second major recommendation relates to a provision to allow landlords to claim for increases in financing costs. Our suggestion there is on existing levels of financing when interest rates increase. If landlords are unable to recover higher costs resulting from future increases in interest rates beyond their control, their investment is inherently risky. The result is likely to be a reduced level of investment in housing by existing and potential owners. In this case we are suggesting that provision be made to allow for interest rate adjustments on existing levels of financing.

"Our suggestion in this case is that we do not think that every case where the rate has gone up a minimal amount should be considered. Our thoughts on it, and we did not present it in our paper, would be that for an increase of 1% or 2% the landlord may be allowed to apply for increases in his expenditures. On the other side of this, if he has applied, we believe that the tenant, after rates decrease, should be able to apply for a reduction."

It was extremely clear from the consultations this committee held that the expert testimony is that it would certainly be in the interest of the housing market to have interest rates restored. On the other side of the coin, there is no doubt that it would be in the interest of tenants to be able to apply for a rent reduction, should those interest rates change downward. The Liberals' two amendments on this, that both interest rate increases and interest rate decreases be considered under this legislation, I think should be reconsidered by the minister. The minister is getting a cup of coffee at the moment, so I will wait a moment until she returns to her seat, because I had a question in this regard.

**The Chair:** I am certain the minister can hear the question.

**Ms Poole:** I will ask the question, and when the minister comes back—

**The Chair:** She will not answer until she comes back.

**Ms Poole:** That is right. We will not expect her to answer on the fly. Minister, is your government adamant that it will not consider relief in this legislation both for interest rate increases on the part of landlords and interest rate decreases for the benefit of tenants?

**Hon Ms Gigantes:** That is correct.

**Ms Poole:** So neither of those two provisions will be considered by your government?

**Hon Ms Gigantes:** That is correct; exactly.

**Ms Poole:** For a government that purports to defend tenants, I think many tenants will be very upset by that statement.

**Hon Ms Gigantes:** I think you are wrong.

**Ms Poole:** You mean tenants would like the fact that they cannot apply for a decrease in their rent?

**Hon Ms Gigantes:** No, they would like the security of knowing that they are not going to pay increases as a result of increased financing costs.



**Ms Poole:** Mr Chair, through you to the minister, I would suggest to the minister that what tenants want and expect is fairness. They think of many issues in life, including tenant-landlord relations, but they think of many things. The test they apply to those things is usually a measure of fairness. If they receive the benefit if there are decreases, and if they have to pay a greater share if there are increases, I think that is how most tenants would want to see this legislation. It is a matter of justice and fairness.

**Hon Ms Gigantes:** I think you are absolutely right that what tenants are looking for is fairness. There is no question that it is a lot easier for a landlord to make an application for an increase because of increased interest costs than it is for a tenant to find out what mortgage arrangements the landlord is making.

**Ms Poole:** This is something the Ministry of Housing could assist with.

**Hon Ms Gigantes:** No. There is no way that can happen in fairness. There is a total imbalance in information and therefore in power in what you are proposing. We will not incorporate financing costs into the landlord's eligible costs for above-guideline increases.

**Ms Poole:** Right now we have a rent registry system which registers the rent of all units in the province. It is a fully computerized system with great capabilities and possibilities for providing information to tenants. I do not see any reason why the ministry cannot ask landlords to file with it mortgage rate changes when they renew their mortgages, and if there is a change, why tenants cannot be advised through the rent registry system so they would have access to the information and be able to do an application. It is not a terribly onerous thing, and it would provide tenants with the information they need and provide them with the ability to apply for a rent reduction. I do not buy the argument that complexity is one reason we cannot do this.

1510

**Hon Ms Gigantes:** I think you should buy that argument after the experience we have had with Bill 51. We have added some we have concerns about, whether they are going to work easily. It is our belief that the more elements of this nature we add in, following your proposal, the less workable this legislation is going to be, the longer it will take for individual cases of rent determination to be made, the more unsatisfactory to both parties in a landlord-tenant arrangement will find this process. We are certainly not going to repeat the kinds of mistakes in terms of the complexities and therefore the unworkabilities and the potential for creating frustration, delay, large retroactive payments and so on which we have seen under Bill 51. It does not make sense.

In this instance it would be of very little help to tenants to suggest this proposal. It would be a great deal of help to landlords. We have seen that in the past. There are landlords who have been able to take advantage of financing costs pass-throughs to the great disadvantage of tenants time after time—not most landlords, but there are landlords who do it and it has to stop. That is our decision.

**Ms Poole:** It would seem to me the minister has made it clear they will not reconsider this matter, and I do not see any point in pursuing it further. I would call the question.

**The Chair:** Ms Poole moves that the question be now put.

Those in favour of Ms Poole's motion will say "aye."

Those opposed will say "nay."

Motion agreed to.

**Ms Poole:** Mr Chair, on a point of order: I think I was out of order, because there was another speaker on the list.

**The Chair:** No, you were not out of order.

**Ms Poole:** I think you cannot call the question if you have been the previous speaker.

**The Chair:** I am told by the clerk that you had a perfect right to make the motion you made at the time you made it. I put the question and it was decided in the affirmative. We should now vote.

**Ms Poole:** Could I have a recorded vote, please?

The committee divided on Ms Poole's motion to add section 14.1, which was negated on the following vote:

#### Ayes—4

Daigeler, Marland, Poole, Turnbull.

#### Nays—5

Harrington, Mammoliti, Morrow, Owens, Ward, B.

**The Chair:** We have a Conservative amendment.

Mrs Marland moves that the bill be amended by adding the following section:

"14.1(1) The landlord may base an application on an increase in financing costs for the residential complex.

"(2) A hearing officer shall not consider an application under this section unless the rate of interest for the financing is not greater than the market rate that would be expected for such financing."

**Mrs Marland:** This amendment extends the scope of a landlord's application to include financing costs, obviously. We have also included a subsection which limits the type of application to legitimate increases in financing arrangements. That is what is significant about our motion and different from the Liberal motion we just dealt with. What we are saying in this motion is that we do not agree that if property owners went out arbitrarily to refinance their projects and asked for extraordinary increases—maybe they have not negotiated a realistic rate, and it might be suggested they do not care about how much the percentage is because their attitude might be that they are not the ones who are going to have to pay it.

Our feeling is that if it is a legitimate market rate of interest, why would it be so difficult to accept that as a cost of doing business for a property owner? We are not suggesting where the rate of interest is inappropriate or extraordinary; we are saying where it is within a fair market rate at that time.

We have already talked this afternoon about the fact that the person applying for the financing does not control the market. I would like to ask the minister if she would



consider it fair if we limit it to applications that are within the current market rate.

**Hon Ms Gigantes:** It is our view that financing costs shall not be part of the very small number of items for which we feel it is appropriate that landlords be allowed to ask for above-guideline increases. The answer is no.

**Mrs Marland:** Why do you feel that way about financing costs?

**Hon Ms Gigantes:** Because this amendment is a mild change from the previous Liberal amendment which we discussed. I think we have had a fair discussion and I do not wish to repeat all that I have said before and unnecessarily tie up the time of committee.

**Mrs Marland:** I do not wish you to repeat anything you have already said. I am asking you something I have not asked you before.

**Hon Ms Gigantes:** The question was asked before and I answered it within the last 20 minutes and then probably within the last 40 minutes. I know Mrs Marland was listening.

**Mrs Marland:** I am asking you if it is not a fair request that where financing is required and that new financing is obtained at the current market value, recognizing that the applicant has no control over what the market costs are at the time, would you consider allowing that financing cost if it was within the current market rate?

**Hon Ms Gigantes:** I believe that question was addressed to me through you?

**The Acting Chair (Mr Morrow):** Yes, it was.

**Hon Ms Gigantes:** The answer is no.

**Mrs Marland:** I will try another question and see if I can get an answer out of this minister who is responsible for housing in this province, and who through that office will still be responsible for housing people when they have no rental accommodation to live in because the property owners will be out of business, which leads me to clarify the point that was allowed by the Chair to be raised by Mrs Harrington.

When we asked her this morning about putting property owners out of business, her response was—and I made note of it—"Many businesses are going out of business in Ontario today." She suggested that I misinterpreted her response. I think it is very clear that the socialist Bob Rae government is saying, "Well, there are many businesses going out of business today and we can't do anything to help." If as a result of this legislation more businesses go out of business, namely, the property owners, I think the implication of those comments will be very clear. We actually have the transcript from this morning now. The clerk has distributed it. When I have a moment to read it, maybe we will be clear about what her response really was.

1520

I would ask the minister, in relation to this amendment, about a property owner who requires new financing and who goes to the various sources, whether it be banks or a mortgage company or other types of moneylenders, when the legitimate current market rate of interest is substantially higher than the mortgage that is presently on that

property, for example, at the end of a 15- or 20-year mortgage which happens to have been at 5% or 6%, which is possible. That property owner goes for new financing and the current fair market rate of interest is obviously not 5% or 6% any more, but maybe 10% or 11%. How does the minister anticipate that the property owner going for that new financing at twice the rate of interest can afford that interest without some allowance through the rents?

**Hon Ms Gigantes:** The landlord will obviously have to manage his or her financial affairs. I cannot suggest hypothetically how that might happen in any given case. I would suggest, though, that in the kind of case Mrs Marland has referred to, obviously it would be the case that during a period when interest rates had been rising, the landlord benefited, relatively speaking, from the fact that the long term of the mortgage had provided an interest rate to the landlord on his or her borrowings which was lower than would have been the case had the landlord had a mortgage opening up in the meantime. It is part of a landlord's business, and it is not my business to suggest to landlords how they will handle the particular arrangements they make.

What is our concern is to make sure tenants do not end up with the burdens that can be imposed when landlords go through remortgaging. The number of times landlords choose to go through remortgaging, the length of terms of their remortgaging contracts—all these things are matters which essentially are the landlord's business. I use that term in both senses: in the colloquial, it is the landlord's business, and it is also the business of the landlord. So we feel, it being the business of the landlord, that it should not become the obligation of the tenants.

We feel also that the guideline will provide for the costs of carrying on business for the landlord. The evidence we have over some period of time is that in any given year only about 25% of landlords make application for above-guideline increases. We can deduce from this that in any given year most landlords, about 75% of them, feel the guideline increase is an adequate rate of return on the investment they have made.

That being the case, we think we should not put another obligation, as has been the case under the existing legislation, Bill 51, where for some period of years tenants have had to carry the obligations of the landlord when it came to increased financing costs. We have made the decision that this is a situation which will not continue. We do not want tenants in this province to be subject to those costs and we have determined that it will not be an element of this legislation.

**Mrs Marland:** The more this minister answers questions, the more clear it becomes that she has no idea about what she is talking about. If it were not so serious I guess it could almost be humorous, because it is really deplorable to sit here and hear the Minister of Housing say she does not care, that it is the landlords' business. It does not take a very bright person to extend a little beyond that. Maybe we all decide we do not care about the landlords, that it is their business. Say we all agree with that. The next point is, what are the landlords expected to do? The minister does not care.



It is a given that the socialist government does not care about the landlords. But I care about the tenants who live in their properties. If we say we do not care about the landlords and the landlords go out of business because they cannot get new financing because they cannot get 1% or 2% rent increases from their tenants, then what happens is the tenants will not have anywhere to live. It is so straightforward, it is black and white.

**Mr Owens:** On a point of order, Mr Chair: The member for Mississauga South is suggesting that if we do not pass this amendment, tenants are not going to have anyplace to live. I would like to ask her where she comes up with that fantasy.

**The Chair:** That is not a point of order, Mr Owens.

**Mrs Marland:** To say it is the landlords' business and has no relationship to tenants is really ludicrous. The very fact that the minister admits only 25% of the landlords have applied for an above-guideline increase—I did not know until she mentioned that, but it is very important—probably tells you that in any given year maybe only 25% of the landlords require new financing.

I ask the minister, if a landlord has a 25-year-old building with a 5% or 6% mortgage, and that building has been under rent control for 17 years since 1975, and now the property owner needs a new mortgage and the current rate is 11%, how does the minister think that property owner is going to finance that project?

**Hon Ms Gigantes:** I do not believe it is terribly useful to get into hypothetical situations, but I do suspect that, given the low interest rate suggested by Mrs Marland and the length of time of this mortgage, had I been the landlord—I know I am foolish to get drawn into this—I would have been tempted to use the income from the building to pay off the mortgage and sit, as I know many landlords from my own community do, with buildings with no mortgage. That is the choice I personally would have made.

**Mr Mammoliti:** How much profit would have been made?

**Hon Ms Gigantes:** Oh, George, you cannot speculate how much profit would have been made.

**Mr Mammoliti:** After 25 years of a low mortgage, and how much would that land be worth?

**Mr Turnbull:** On a point of order, Mr Chair: If we have this kind of conduct being allowed, George Marma-lade jumping in with his idiotic comments, you will find me jumping in a lot more. I have been a lot quieter lately, but I am not going to have this imbecile—

Interjections.

**The Chair:** I think, Mr Turnbull, you should withdraw those comments.

**Mr Mammoliti:** He should leave is what he should do.

**Mr Turnbull:** I will withdraw. You are not an imbecile. We will leave the viewers to judge for themselves.

**Hon Ms Gigantes:** That is not a withdrawal, Mr Chair. That is a repetition.

**The Chair:** Perhaps you could be helpful. The committee has functioned relatively well and—

**Mr Turnbull:** Mr Chair, I will reiterate, he is not an imbecile. But I am finding it intolerable to have him constantly interfering in this way and I will look to the Chair to make sure it does not happen any more.

**The Chair:** I think members should reflect on what we are here to do, and that is the public's business. It is not helpful for any member to interject at any point. The best way to do the public's business is if we in an orderly fashion respect each other, whether we agree or disagree with the point of view expressed, and operate in a civilized fashion. I would ask that the committee consider that carefully and that in the future we refrain from interjections and the type of comments I have heard in the last couple of minutes. Mrs Marland has the floor.

**Mr Mammoliti:** You don't have a window above my car, do you?

**Mrs Marland:** You see?

**Mr Turnbull:** On a point of order, Mr Chair: I have made my point that we expect you to gag these silly comments.

**The Chair:** Interjections, as you know, are always out of order, Mr Turnbull. It might be wise for the committee to take a five-minute recess. We will continue at quarter to 4.

The committee recessed at 1532.

1547

**The Chair:** Mrs Marland had the floor discussing her motion to add section 14.1.

**Mrs Marland:** When the minister talks about everything being the responsibility of the property owner and indicates that it is not her business but theirs, to a certain degree that is true. It would apply to any business in the province. What we are trying to do is say that government should be getting out of the private sector business more and more, and we have enough evidence, on any example you want to give, that anything government does costs twice as much as the private sector doing it. I would agree if we are saying the government should stay out of private sector business.

The irony is that if we pass Bill 121 without my amendment, section 14.1, we will have the government getting more into business through having to provide more rental accommodation in this province than ever before. As a result of the government defeating this motion, the private sector is going to be backed more and more into a corner and will not be able to afford to stay in the business of providing rental accommodation, because when they go to refinance, remortgage their buildings, two things are going to happen. One is that without this amendment, if the market rate of interest is, for example, double what they had been paying, then obviously it would not be within their financial capability to pay double the rate of interest on the mortgage on their whole building without being able to cover that off with some other income.

The minister said in response to my example of an older building with a 15- or 20-year mortgage that if they had an older building she would hope that in the meantime they had been paying down their mortgage. At that point the member for Yorkview jumped in and said something



about profit. I did not hear his total interjection and I do not know whether his interjection is going to be in Hansard; I am going to have to wait until tomorrow to see that in order to quote him accurately. But his tone, the way he said, "They've been making a profit, you know, de-da-da-da," his intonation is that profit is a dirty word. We are back to this fact, that these socialists believe no one should make a profit.

If we are going to say to a landlord, "When you come to refinance your building, we're not going to allow you anything above the guideline"—and bear in mind that the guideline percentage increase in most given years is probably going to be below the inflation rate, then what we are going to say to that landlord is: "Tough luck, you're out of luck and we think you've had enough years that you could have paid down your mortgage. You've made a nice profit. That's our assessment. It'll fall where it'll fall now." The tragedy is that where it will fall is that tenants will be in buildings that ultimately will have to be abandoned. That does not sound very serious if you are not involved. It does not sound very serious until you start getting some very concrete—pardon the pun—examples of what is going to happen.

The parliamentary assistant said earlier that she cannot understand why this committee cannot work together. I suggest that it is very difficult for us to work together on this committee when this government and its members opposite will not even consider one of our amendments. How can we work together if they will not consider one of our amendments? There have been amendments to this bill that we voted in favour of: your amendments that are already printed in the bill. But you have not yet voted in favour—no, you have not even considered any of our amendments.

When we ask you for your sources of input as to how you can argue that this is not a legitimate, important amendment to the people of this province, you cannot even name your sources. You cannot even name a single, solitary expert who may have given you the opinion that we are trying to give you with these amendments.

What is going to happen to this landlord the socialists do not care about? That is fine, that is up to them, but we care about the landlords and we care about the people who live in their buildings. But if it is none of your business, Madam Minister, can you just tell me what is going to happen as a result of your legislation? When there is a fair market rate of increase, what happens to that landlord when he has no recourse to recover the differential in the cost of his building financing, because you will not support this amendment? What happens to him, and do you care?

**Hon Ms Gigantes:** The position of the government is that the legislation represents the best effort, which I think will prove to be a very good effort, to balance the interests of landlords and of tenants in Ontario. It is the position of the Conservative Party that financing costs should be costs for which a landlord can apply for an above-guideline increase. It is our position that that should not be the case, and it has been a position at which we have arrived after having heard discussion of this particular item in the consultation period by many, many groups and individuals around the province. We feel quite strongly that it is inappropriate to propose that the item of interest rate changes,

given all the variances that can occur around how a landlord deals with mortgaging of a property, should be an item which can be passed through to tenants directly. We are not satisfied to see that happen.

I should also add that I was corrected by the ministry when I suggested that 25% of landlords on an annual basis made application for above-guideline increases under the existing legislation, which, as you know, has wide-open provisions for financing and refinancing pass-through of costs. It is in fact 17%.

What that indicates to me, as a person who is responsible at the moment for the application of the legislation and for the changes in the legislation which we are proposing, is that most landlords have found they do not have to make an application above guideline. Mrs Marland has suggested that it is a regular occurrence for the guideline increases to be lower than inflation. She will know that was not true in the past year. It will not be true in 1992. The guideline reflects the real costs of building operation by apartment owners over a three-year period as a rolling average, and it does in fact represent an amount which for most landlords in any given year has been quite adequate.

We are making provision for landlords to apply for above-guideline increases capped at 3% annually for items which, when justified, we feel are items that tenants can be asked to contribute to. We have also provided that where a capital expense is a very large one and a 3% cap will not mean that tenants will fully pay for the increase in a one-year increase, then we will—

**Mr Turnbull:** On a point of order, Mr Chair: She is talking about capital, which has nothing to do with financing.

**The Chair:** That is not a point of order, Mr Turnbull.

**Hon Ms Gigantes:** Thank you, Mr Chair. I am trying to put the question of interest rates and whether they should be passed on in the context of the other matters which this legislation would allow landlords to pass on if they justify through an application. That is the question of capital renovations. We have allowed not only for a 3% above-guideline annual increase in rents, when justified, for capital undertakings, but we have also provided that there can be an additional two years of roll-through on a given capital application. In other words, the landlord can continue charging in year 2 and year 3 after an application in order to make up the cost of a major capital work.

1600

Given the fact that most landlords do not make application on an annual basis, given the fact that we are providing within the legislation what we think is a generous scope for landlords to apply for capital renovations, we do not think that tenants should also be called upon to provide the payment for changes in whatever arrangements a landlord takes on in terms of financing. It is not simply a question of what level the interest rate is at; it is also a question of how often the landlord remortgages and when the landlord chooses to remortgage. Because as long as we are saying in this amendment that it is at a market level of interest, then it would be okay, but what if the landlord chooses to do it every year or, in those years when doing



that, we will allow the landlord to make an application for above-guideline increase? The matter becomes complex.

Certainly we have understood in the past, from experience under previous legislation, that this is an element of cost to tenants which is very difficult to determine in a fair manner. We certainly know from experience that tenants of some landlords have paid a high price in terms of rent increases based on financing costs, and we have decided, having thought about all of the elements involved in this decision, that we are not going to propose this in this legislation.

**Mrs Marland:** The minister chooses to ignore my questions, so I will continue to place them until I get an answer. First of all, I think the minister knows very well that the answer she just gave involving roll-through carryovers over three years, two years, for capital renovations has nothing whatsoever to do with the percentage I am talking about dealing with financing. Financing costs do not come under capital improvements in this legislation, and I would have thought by now that the minister would know that about her own bill.

Obviously, in pleading for this amendment I am not interested in supporting landlords and property owners who have frequent refinancing at high rates and flip apartments because it is to their financial advantage to do so. I am not interested in any of that stuff. I am concerned about tenants who in the past have in some examples had to pay rent increases to accommodate the frequent flipping and refinancing of properties.

But what we have with this legislation is the old example of the elephant gun to kill the fly. There are other ways of dealing with those examples which the minister chooses to give in response to my question, which was not the question I asked. The thing is that if the government chooses to ignore what happens down the road—just take that small landlord who bought a two-storey or a three-storey walk-up with maybe six or eight units and has owned it for 15 or 20 years, and he needs to refinance his mortgage, to apply for a new mortgage. Under this legislation, as I keep saying, there is no way he can get that mortgage without being able to recover some of the increased costs—maybe double the rate of interest from the old mortgage—without having some latitude in the rents.

It is interesting. The minister says it would be wrong for the taxpayers to help the landlords finance their buildings because it is a business. What is the difference between using taxpayers' money to buy out de Havilland, I wonder. There are some examples where it is okay to use taxpayers' money to buy out a private business, but there are other situations where there is no way on God's green earth that this socialist government thinks it has any responsibility to anybody in terms of this subject of rental housing in this province. While they choose to ignore the people who own the rental accommodation, what they do not seem to get into their understanding is that they are also choosing to ignore those tenants.

What is going to happen when all these examples come to light when the property owners can no longer refinance their buildings? They certainly cannot sell them. Nobody is going to buy a building where rents are not stable, because

nobody is going to be able to get new financing on a building where there is no guarantee of income. It is like buying any kind of business. If there is not a profit and loss statement that can be generated to show what the incomes are and what the expenses are within some secure parameters, nobody is going to finance it and nobody is going to buy it. You are going to have property owners put out of business because they cannot afford to refinance their buildings. I ask you, Minister, what is going to happen to those tenants? Do you care about those tenants? I know you do not care about the landlords who own the buildings, but what are you going to do for those tenants when those buildings can no longer be refinanced?

**Hon Ms Gigantes:** I think Mrs Marland makes assumptions when she says she knows what I care about. That is not the case. She does not know what I care about.

**Mrs Marland:** No, I am asking you.

**Hon Ms Gigantes:** Also, there is no way that I accept her outline of some kind of disaster flowing from our decision in proposing this legislation, in the form it is in, to decide that there will be no above-guideline increases for landlords on the basis of changes in financing costs. I do not accept that scenario.

From time to time, as in any other business, there will of course be landlords who, for a combination of reasons, will have difficulty assuring themselves of a profit. There is absolutely no sector of business in which this does not happen. However, having considered the issues involved and having considered them with the benefit of advice from inside and outside the ministry, from places around this province, having looked at evidence from now close to 16 years of experience with various combinations of rent regulation legislation in this province, there is just no way the assumptions she is making and the picture she is painting are ones I agree are accurate.

I do not expect, I do not want and I do not foresee a situation in which vast numbers of landlords will not be able quite effectively and profitably to run their businesses, who will therefore leave derelict buildings standing in some kind of moonscape in urban centres of this province. I believe this is not only an exaggeration; it is just so far off the situation that will exist that it does not relate to reality.

1610

Mrs Marland has one view, which she has expounded. Before you is a bill which represents another view, and it is not simply another view based on a lack of understanding of how landlords operate. It is not based on many of the motives Mrs Marland has described; it is based on our best judgement of what is a reasonable balance in terms of the interests of landlords and tenants.

I have attempted to put this particular item of financial pass-through of interest rate changes in a context for Mrs Marland. She rejects that context. Every item we deal with is the item which is going to create the total disaster she foretells. I do not accept her reading of the situation. I do not think it is close to reality, in all frankness, and we have made a decision based on the best evidence and the best judgement we can make.



**Mrs Marland:** I asked the minister if she cares about those tenants and she chose not to answer the question. I did not say whether she cared about them or not; it was up to her. I gave her an opportunity and I asked her, do you care about those tenants whose buildings are going to go "out of business" because of the policies of her government as drafted in this piece of legislation?

I think this minister's office must be inside some kind of cocoon, because it is so apparent that she does not know what is going on in the real world. I am not the Minister of Housing, I am simply the spokesperson for our party on housing and I do not have all the Ministry of Housing staff at my fingertips as a resource to tell me what is going on out in the real world in Ontario today. But I do have some common sense and I read the newspapers, including the financial newspapers. If I can understand what is going on in the real world about the financing and refinancing of rental property in this province, I would expect the minister might understand that. She said there are not a lot of examples where there is a problem. She said there are not vast numbers of buildings.

If you do not believe that what I am trying to say is going to happen as a result of this legislation, why would you not agree to sit down even with some of the financial institutions who hold mortgages on these buildings, who have already told the building owners they will not under any circumstances refinance their buildings? When their current financial arrangements expire they will not refinance their buildings if this legislation goes through, because banks cannot afford to be in that kind of business either. Banks cannot lend money where the person who needs the money has no guarantee of a certain amount of income on their investment.

Here, on top of that, without section 14.1, we are saying: "We don't care if your costs go up. You're not going to get more than the amount of money we are allowing you, which is a 3% increase. We don't care. We don't care how much it costs you to finance your building." Even if it is a market rate of interest they obtained to refinance their building, even if they have not refinanced their building in the last five or 10 or 15 years, "We don't care," the minister says.

Do you have that statement made by the Premier? Just to show you where we are and probably what is behind some of the direction in this legislation and why I am quite sure the government is going to continue to oppose my amendment, I want to read a short quotation which endorses what the minister is saying this afternoon and explains why I am scared to death for the future of tenants in this province, let alone the direction of the economy in this province. Speaking of rental property, he said:

"You make it less profitable for people to own it. I would bring in a very rigid, tough system of rent review. Simple. Eliminate the exceptions and loopholes. There will be a huge squawk...and you say to them, 'If you're unhappy, we'll buy you out.'"

That was then opposition leader Bob Rae, as quoted in a pre-election newsletter of the Federation of Metro Tenants' Associations.

Maybe we are just wasting our time sitting here. As opposition leader, he said, "If you're unhappy, we'll buy

you out." I guess that is the philosophy, the policy, the ideology we are dealing with here. Of course, this socialist government is not going to buy out the property owners at a fair market value. Oh, no, that is not going to happen. We are going to pass Bill 121, without any of the amendments presented by the opposition members. Then, when all these properties cannot get refinancing with a fair allowance for the increased financing costs due to the current market rate of interest, when they cannot in the majority of cases even get new financing at any rate, I guess the dream of the former opposition leader, now the Premier, Bob Rae, will come true. They will use tax money to get into the housing business by buying these buildings at their depressed value, not a market value based on a fair market but a depressed market value which they will have induced by Bill 121, this bill before us today.

This is such a tragedy that is going on here. The biggest tragedy is that the impact and the understanding of what is happening with this legislation will not hit the public before it is passed. That is the bad news. I guess the good news is that it will hit the public before the next election, and after the next election we will not have to sit in a committee like this listening to the kind of philosophy and policies being espoused at these committee hearings. I ask the Minister of Housing questions she does not answer. She chooses to reply in areas that have no relevance to the questions I have placed. They choose to say that they do not care what happens to the landlords, it is their business: "It's not my business, I'm only the Minister of Housing. It's the landlords' business."

1620

**Mr Abel:** You said that; we never said that.

**Mrs Marland:** The Minister of Housing said it is the landlords' business. It is the Minister of Housing's business to ensure that there is accommodation for tenants in this province in well-maintained, well-kept-up buildings. There will be nobody there to provide those buildings in the private sector because this government will have put the private sector totally out of business with millions and millions of dollars in bankruptcy to those personal owners of those properties. It is a travesty, and I think the humour of the debate that is reflected in the comments of the government members shows they do not care either. It is not only the Minister of Housing, I assume, who does not care about these tenants and landlords.

I want to assure that the Progressive Conservative caucus does care about tenants and landlords in this province and that is why we have placed this amendment to the bill. We are trying to open the door just a little. If something is beyond the control of a property owner when he goes to refinance the residential complex, we are trying to say, "Will you accept a fair market rate of interest?" and allow for him to apply for a little more than the 3% when that is the case.

When the minister says, "That's the landlord's business," she is saying, "Fine, that's their business." I am sure the tenants can hear very clearly what that message is. The tenants are not going to be blackmailed into believing that this bill protects them. The tenants of this province understand very clearly what this bill does. Unlike some members



who refer to tenants as peasants, I do not. The tenants I know and the tenants I represent are very intelligent people and understand very clearly what is going on during these committee hearings. They understand very clearly the implications of this bill. They know that if they are blessed, or cursed—whatever word you want to use—with a Minister of Housing of this Bob Rae socialist government, which does not care about the person who owns their building who will soon be out of business, those tenants know quite well that they are the people who are going to have to face the repercussions of that kind of philosophy.

**Hon Ms Gigantes:** On a point of order, Mr Chair: I believe it is out of order for any member to ascribe motives to another member. When I answered the last series of questions or comments Mrs Marland raised I did attempt to point out to her that it was inappropriate for her to make assumptions about my motives, whether I cared or did not care and whether she understood that I cared. She does not understand, Mr Chair, and I would like to call upon you to ask her to stop trying to ascribe motives.

**The Chair:** Thank you, minister. As members all know, it is not parliamentary to impute or ascribe motivation to other members. Mrs Marland.

**Mrs Marland:** Mr Chairman, I am describing what it is that the people who live in rental accommodation of this province understand.

**The Chair:** Neither can you do indirectly what cannot be done directly.

**Mrs Marland:** I beg your pardon. I can certainly speak on behalf of my tenants.

**The Chair:** Certainly you may.

**Hon Ms Gigantes:** Not in ways that are out of order.

**The Chair:** Minister.

**Mrs Marland:** I can speak on behalf of my tenants, minister. You may speak on behalf of whomever you wish. I am here elected to speak on behalf of my tenants and that is all I am doing. Even you, in your almighty power, cannot stop me from doing that.

**The Chair:** Mrs Marland, this line is not particularly helpful to the decorum of the committee. I would ask that perhaps you choose your words more carefully.

**Mrs Marland:** You are absolutely right, and if the minister would stop interrupting I could complete my comments. It was the minister who interrupted me, as I recall. I did not interrupt her.

**Mr Abel:** It was a point of order; it was not an interruption.

**Mrs Marland:** There is a classic comment from a government member. "It was a point of order; it was not an interruption." It was not even a point of order, as you know.

**The Chair:** Mrs Marland, it was a correct point of order. Now you may continue.

**Mrs Marland:** I am concerned about the fallout for the tenants of this province of the government's lack of support for my motion. I say again on the record that if this government should think in its wildest imagination that the tenants in this province do not understand what is going

on, then the government is going to have a rude awakening when it finds out that the tenants understand fully. You cannot beat the landlords over the head and drive them out of business without its having an impact on the tenants.

The tenants will tell you themselves that they understand financing. They understand market rates of interest charged by financial institutions. In fact, for the most part, most of them understand it so well that this is why they have had to postpone getting out of their rental accommodation and purchasing their own investment, because they know what the market rates are, they know whether it is an affordable step for them.

In spite of the fact that the Minister of Housing thinks people chose to have rental accommodation, the fact is that for the most part, with the exception of tenants who have given up their homes because they are older or have been taxed out of them and have had to move back into rental accommodation, most tenants you talk to in this province—not all of them, by any means, but the majority—would prefer to be paying their monthly sums of money into their own investment rather than somebody else's, as they do through different forms of rent.

So the tenants know very well that financing of buildings and land is dependent on current market rates and that the current market rates are something individuals have no control over.

In closing, the fact that this government chooses not to accept my amendment which would allow for financing costs to be considered—we are not asking for an outright ruling here. We are not asking that all refinancing costs, regardless of the rate, be an automatic rent increase for tenants. It is not an outlandish request; it is very specific. If the minister and the government members choose to vote against this amendment, the fallout from that decision is on their heads, not ours.

**Mr Turnbull:** I would like to go back to some of the minister's earlier comments which rather tweaked my interest, your explanation that landlords who are having an increase in interest rates have already benefited from having the lower rate than the market rate at the time it is renewed. Will you explain to me, within the context of the existing rent regulations that have existed in Ontario for the last many years, the pass-through method, how they benefited from that?

1630

**Hon Ms Gigantes:** They have been, if they were fortunate enough to have a mortgage rate at the levels being proposed by Mrs Marland—mind you, I do not know where they would have got such a mortgage rate unless we went back maybe 15 years, as she proposed. That might be the case; I cannot recollect. They have been the beneficiary of a long-term stable financing arrangement which would make them, in terms of the rental market, probably pretty fortunate as landlords compared to the landlords who had started out with mortgaging rates in the last 5 or 10 years.

**Mr Turnbull:** Interest rates have gone up within the last five years. They have fluctuated and they are going down at the moment. If you had a mortgage, let's say a three-year mortgage, and at the time you bought it that was



the best available rate, if at the time it is renewed it is less, that is a benefit, but if it has gone up, it is a disadvantage.

**Hon Ms Gigantes:** Let us suppose that the ordinary level of rents at the point—

**Mr Turnbull:** Excuse me, I am not familiar with the term “ordinary level.”

**Hon Ms Gigantes:** One can take an average rent—CMHC does every quarter—for a one-bedroom or two-bedroom apartment in various urban centres in Canada. If we took those figures back over several years and looked at a landlord who was able to handle whatever financing costs he or she might have had at a low level, relatively speaking, and at the same time have rents which were at the average level, there obviously would be a benefit to that landlord to have had low mortgage payments.

**Mr Turnbull:** I can see you do not understand how the rent control methods worked. I would be happy if you would refer to your ministry official beside you, because when they went to rent review periodically, if they were doing a capital repair, the total costs were reflected, both the financing and the capital costs, and depending on the interest rate they got a rent greater or lesser. You are saying “taking the average.” I am sorry, when you are talking about rent controls, the average has absolutely nothing to do with a specific building. It is absolutely a red herring.

**Hon Ms Gigantes:** I think there is some complication in this discussion because I believe Mr Turnbull is talking about interest rates assumed on capital works, and I believe—

**Mr Turnbull:** No, I am not. You seem to be mixing it up. I am saying that at the time you go to rent review that would be one of the factors. There were several factors in the basket for consideration by a rent review officer, but with respect to interest rates on mortgages, one of the factors in terms of rent increases was the mortgage rate and the amount of money paid on the mortgage.

**Hon Ms Gigantes:** If you are talking about an above-guideline increase on a landlord application—

**Mr Turnbull:** No, excuse me. If you went to rent review—yes, for an above-guideline increase there was always the element of pass-through. That is what we are talking about. If you went to rent review and your mortgage had been at the lower rate, then it had been the tenants who were the beneficiaries of that.

**Hon Ms Gigantes:** On an above-guideline application.

**Mr Turnbull:** On the lower rate.

**Hon Ms Gigantes:** You are talking about a case in which the landlord has made application either under the old—

**Mr Turnbull:** No. You said that if he had in the past a lower interest rate, he had been the beneficiary. On the contrary, the tenants were the beneficiaries because they had not had an increase with respect to that. And do not talk about the average rent; there was a specific rent on that building and the rent was driven by a basket of factors, and one of them was the interest rate they were paying. To suggest the landlord somehow had wickedly benefited is rather disingenuous.

**Hon Ms Gigantes:** Oh, no, I ascribed no motives to landlords. I was talking about the relative—

**Mr Turnbull:** No, but please explain the economics of how he has benefited.

**The Chair:** Maybe you could allow the minister to reply.

**Hon Ms Gigantes:** I was trying to address the question—which I understood to be the question—related to the relative market position and therefore the profitability position of the landlord. I do not think it particularly helpful to try to mix into the discussion which was being raised by Mrs Marland a whole other discussion which would relate to the number of times a landlord in a 15-year period had made an application for an above-guideline increase and the elements that would play around that, because that was not the point Mrs Marland was trying to raise.

**Mr Turnbull:** I am not talking about what Mrs Marland was saying. I am talking about what you had said at the beginning about the benefit of lower interest rates. Typically, mortgages renew every five years. That has been the history of most residential landlords, that they have gone for five-year terms. There have been periods when they have managed to get longer ones. There have been periods where interest rates have been so high they have said, “I’ll go for a shorter period because I am hoping the rate will come down,” and they have locked into a very short-term higher interest rate.

How does the tenant not benefit from that? It has not been the basis of a rent increase if they have had a lower interest rate. There has always been the element, until your government came along, of a cost pass-through. That was the basis of the whole structure of rent review, so it was the tenant who was benefiting, much in the same way as in our discussion yesterday it was the tenant who was benefiting if he were in a land-lease building where the costs were lower as a result of the fact that the landlord did not own the land, was renting it at a lower rate. It is exactly the same kind of situation. The tenant has benefited.

**Hon Ms Gigantes:** Mr Chair, there will be cases where tenants have benefited. There will be cases where landlords have benefited. There will be cases where both have benefited.

**Mr Turnbull:** Could you explain how the landlord has benefited?

**Hon Ms Gigantes:** If the landlord had a long-term lease, which was the subject to which Mrs Marland had asked me to address my mind—

**Mr Turnbull:** No, she did not say anything about the long-term lease.

**Mrs Marland:** No, I did not.

**The Chair:** You meant “mortgage,” did you not?

**Hon Ms Gigantes:** I did. Excuse me. I said “lease,” when I meant “mortgage.”

The subject to which Mrs Marland had asked me to address my mind, to which I attempted to respond, was the situation where the landlord had a long-term mortgage at a low level of interest. In responding to her, I made comments which do not fit with the new scenario which apparently



Mr Turnbull is now raising, and he is trying to suggest that the comments I made that related to what Mrs Marland was discussing are comments which would also, he insists, be made to apply in the case or cases which he is trying to raise. I am not quite sure what point he is trying to make, so if he could stop saying that I said something about the case he is raising, whatever that is—if he explains what that case is I might try to address it—and recognize that the comments I made to Mrs Marland related to Mrs Marland's case, I think that would help us.

**The Chair:** I am certain Mr Turnbull will phrase the question correctly.

**Mr Turnbull:** How would you reconcile the fact that we had a cost pass-through system and the landlord's interest rate was one of the elements of the cost pass-through, and now you are saying that you are going to take this away and you have a refinancing coming up and the bank says, "I'm sorry, you don't have enough income and you don't have an ability to increase the income relative to the interest rate"?

That is a hypothetical, simply because at this moment in time we have lower interest rates than we have had for the last few years. However, this legislation, I assume, you are planning on having for the duration of your term as a government, so we are looking at until 1995, I presume. If we then have high interest rates and we have a bank saying, "We're not going to renew"—in fact, banks today, even with lower interest rates, are saying they are not going to renew—how would you reconcile that with the ability of getting private enterprise to remain in this industry?

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**Hon Ms Gigantes:** The member is correct when he says there may be landlords who will be seeking to renew their mortgages at this point, and it would be hypothetical to suggest that in fact they would be asked to pay higher interest rates unless they had other problems, because the general level of interest rates is as low as it has been, I believe, for at least 10 years and probably more.

That being the case, if we were addressing the hypothetical situation where over the next, say, three years interest rates were to increase significantly again, we would also be looking at a situation where—for example, right now, because the guideline is based on three past years of actual costs of operation for landlords in the province, the guideline is well above inflation; it certainly will be.

We will look back, at the end of 1992, during the period when the guideline will have been 6%, and we will be able to say there has been a big gap between the guideline which the landlords could charge if they could find tenants—and that speaks to a whole other matter—without ever bothering with an application to rent review. Even if interest rates should increase over the next few years, there will be a period in which the guideline, certainly during this year, is going to be well in advance of the building costs of operation for this year.

It is my feeling that these things have tended to work themselves out. Because there is a roll-through provision with the guideline, the guideline does not go up as fast as inflation and it does not come down as fast as a recession. It tends to even things out. That can be a benefit to tenants

at one point and a benefit to landlords at another point and vice versa.

I do not see, for the reasons I cited when attempting to respond to Mrs Marland's question, that there is going to be a problem for landlords in general. I cannot tell you, nor can you tell me, how many landlords might be forced to sell buildings, get out of being landlords, over the next two years, the next four years, the next six years, the next 10 years. Not one of us here can know that, but I do feel quite honestly that this legislation provides a balance between the interests of landlords and the interests of tenants in this province and that we are not going to be faced with the kind of quite dramatic scenarios which Mr Turnbull and previously Mrs Marland have been suggesting.

**Mr Turnbull:** First of all, your suggestion that the 6% is purely available to the landlord is erroneous because, as we well know, 2% of that is in fact for capital programs, so we are talking about 4%. We know the projected inflation rate for this year is something in excess of 3%. The actual inflation rate with respect to the operation of apartment buildings is going to be significantly higher than this. Why? Because municipal taxes are scheduled to go up astronomically. We have seen this in the papers every day. We know that hydro is going up by 11.5%. We know all the factors that are driven by government agencies which are higher than the general inflation rate. To suggest that it is 6% is not correct. It is 4% that we are looking at with respect to any financing.

**Hon Ms Gigantes:** No.

**Mr Turnbull:** Yes, it is, minister. Please check your figures.

You suggest it is inconceivable, unless there were something wrong—I am not quite sure what you mean by something wrong—that people would be having difficulty refinancing at the moment. If somebody has bought a building with a first and second mortgage and the second mortgage was at a lower interest rate and it comes up, and that was from maybe a vendor, then the vendor at this point may say he wants his money out, so you have to go to the general market for it. The banks are saying, "No, we won't finance it."

**Hon Ms Gigantes:** Perhaps I could ask Mr Harcourt to make a comment on the experience we have had in the relationship between the cost-of-living index and the component of the guideline that reflects inflation.

**Mr Harcourt:** If you look at the consumer price index between 1976 and 1991, you will see that costs have gone up 109%. The guideline over those years, which has fluctuated anywhere from 8% and as low as 4%, reflects an increase of 92.5%. While the cost of 92.5% is less than 109%, one must take into account that operating costs in a building are less than the actual rents. We have said under this act that it is approximately 55% and under the previous legislation it was 67%, but it is somewhat less than the actual cost or actual rent of the building. Based on that, in fact the guideline increases in most buildings have probably accounted for more than the increase in operating cost for that building.



**Mr Turnbull:** Okay, but it is a fact that within the 6%, 2% of that is for capital.

**Mr Harcourt:** You are correct, 2% is for capital.

**Mr Turnbull:** That is a non-starter, so we are talking about 4%, right?

**Mr Harcourt:** We are talking 6% unless the landlord makes application for above-guideline increases based on capital expenditure.

**Mr Turnbull:** Yes, but the assumption built into that is that 2% of that—

**Mr Harcourt:** Two per cent of the guideline for capital is correct.

**Mr Turnbull:** So we are talking about 4%.

Would you comment on those items which eventually will work their way through into the rolling average, such items as the hydro increase of 11.5% and the proposals for tax increases. I see Metro is talking about a 15% tax increase. When will that reflect itself in the guidelines?

**Mr Harcourt:** The increases for 1992 will be reflected in the guideline for the following year. They will begin to fold in over the next year and will continue to over the next three years given that the guideline is a three-year moving average.

**Mr Turnbull:** Let's take the situation that somebody has a second mortgage coming up which was below market rates, and we also have tax increases and we also have hydro increases.

**Hon Ms Gigantes:** Below current market rates?

**Mr Turnbull:** It is possible, a second mortgage, absolutely. A second mortgage has a higher interest rate than a first mortgage rate, in case you do not know that.

**Hon Ms Gigantes:** He has it wrong but I do not like to be rude.

**Mr Turnbull:** I beg your pardon. A second mortgage is not the same as a first mortgage.

**Hon Ms Gigantes:** I think you said it backwards.

**Mr Turnbull:** A second mortgage is more expensive than a first mortgage.

**Hon Ms Gigantes:** If I could make one more comment before we continue this, if Mr Turnbull will permit me, it is not accurate to say, in my view, that if there is a 6% guideline then the landlord has to operate with 4%. Somehow you are deciding to cut by 30% the amount of the rent increase available under the guideline which the landlord would have at his or her disposal to use for whatever purposes. Nothing in the 6% guideline has to be justified in terms of what it is used for until the landlord makes an application for an above-guideline increase.

**Mr Turnbull:** If you have a new roof in a given year and the previous year you have not spent your 2% on capital items, am I not correct in thinking that it will be disallowed?

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**Hon Ms Gigantes:** No. There would be no call upon you as a landlord to justify the use of guideline increases until the year in which you made an application for a capital improvement or an extraordinary operating cost increase.

**Mr Turnbull:** Okay, so in that given year you would have 4%?

**Hon Ms Gigantes:** No, you would not.

**Mr Turnbull:** The 3% and 2% would be available for capital—

**Hon Ms Gigantes:** You would have to use the 2%, that is right. Yes, you would.

**Mr Turnbull:** You would have 4%.

**Hon Ms Gigantes:** That is correct, yes. In that given year, that is correct.

**Mr Turnbull:** So going back to my discussion of a second mortgage coming up and your being so shocked at my saying that would be possibly a higher rate than the current interest rate—plenty of second mortgages were done at lower interest rates—

**Hon Ms Gigantes:** Lower than 6%?

**Mr Turnbull:** You are not going to get a second mortgage at 6%.

**Hon Ms Gigantes:** Well, that was what—

**Mr Turnbull:** I never said there were any second mortgages at 6%.

**Hon Ms Gigantes:** Very good.

**Mr Turnbull:** Where do you get a first mortgage today on a five-year term for 6%?

**Hon Ms Gigantes:** I am very sorry, Mr Chair. I think there is confusion again, because the statements I made earlier reflected my response to a scenario which had been put forward by Mrs Marland, which suggested a long-term mortgage of 5% to 6%. When I made those statements, Mr Turnbull decided I made them about every situation. Perhaps I should not have entered into a discussion of scenarios, because this is what has occurred.

**Mr Turnbull:** What is a first mortgage available at today? What rate?

**Hon Ms Gigantes:** It would depend on what you were doing with it and where you sat.

**Mr Turnbull:** If you were going to put it on an apartment building, how much would a first mortgage be?

**Hon Ms Gigantes:** That would depend very much who the customer was and what the customer was getting the first mortgage for.

**Mr Turnbull:** What range of rates would it be?

**Hon Ms Gigantes:** That would depend on the person, the financial position of the person or the company, and what purpose the mortgage was for.

**Mr Turnbull:** But what range would it be?

**Mr Abel:** On a point of order, Mr Chair: What does this have to do with 14.1? I really do not think this line of questioning by Mr Tilson is—

**Hon Ms Gigantes:** It is not Mr Tilson.

**Mr Abel:** Sorry, I just got so upset. I really do not think it contributes—

**Mr Turnbull:** It has everything to do with what we are talking about.

**Mr Abel:** I thought I had the floor.



**The Chair:** Mr Abel.

**Mr Abel:** I really do not think Mr Turnbull's line of questioning benefits this committee or is the reason we are here.

**The Chair:** Thank you, Mr Abel. Mr Turnbull can continue, but I would tell him that although we are discussing the relevance of a section that deals with interest rates, it may be more useful to deal more directly with this section.

**Mr Turnbull:** Mr Chair, as you will appreciate, this has everything to do with the clause we are discussing. Any discussion of 6% interest rates for mortgages is disingenuous. There are no 6% mortgages around. What we are talking about is the replacement of existing mortgages. First mortgages are in the 10% range at the moment for an apartment building, if you can get them, and second mortgages are considerably more than that, if you can get them.

**Hon Ms Gigantes:** Mr Chair, I agree with him and I think that was why his earlier phrasing of what he was intending to say was backwards, which did tend to confuse.

**Mr Turnbull:** There was nothing backwards in what I said. I do understand what I am talking about with respect to real estate, and you demonstrate every day you speak that you do not understand what you are talking about.

**Mr Morrow:** On a point of order, Mr Chairman: Is that necessary?

**The Chair:** Why do we not just leave it where it is for now?

**Mr Turnbull:** If you have a mortgage which is being replaced at less than current interest rate and the banks will not accept it—

**Hon Ms Gigantes:** Do you mean that the mortgage you have is less than current interest rate?

**Mr Turnbull:** Yes.

**Hon Ms Gigantes:** Okay, I think I have it.

**Mr Turnbull:** What would you do when the banks are saying, "Sorry, you don't have enough money to cover it?"

**Hon Ms Gigantes:** It would very much depend on the situation. That is why I think it is really not terribly helpful for us to discuss specific scenarios.

**Mr Turnbull:** Give me an idea as to what specific situations there would be, because I am sorry it is incorrect.

**Hon Ms Gigantes:** You have proposed one, and you have asked me what I would do about it. It would very much depend on the financial situation I was in personally, perhaps my family's personal financial situation, perhaps a partner's financial situation. It could depend on whether I thought I was going to live for the next 10 years. Certainly a lot of factors might come into play if I were going to make a decision personally of that nature. As you know, there are a million kinds of influences that might in any given situation be important to a person making that kind of decision.

**Mr Turnbull:** That is an absolutely unacceptable answer. We have people who are going bankrupt today and all you say is, "We're not going to talk about hypotheticals. There are a million situations. Let's not talk about it."

You have not answered a question satisfactorily for the opposition today.

**Hon Ms Gigantes:** Mr Chair, I have attempted, certainly, to do my honest best to answer the questions. It is not accurate for Mr Turnbull to say that I have said, "It doesn't matter, blah, blah, blah." I have not said those things. I have not dismissed the questions. I have done my level best to try to answer them. I may not have given the best answers in the world, but I certainly have done my level best to answer them.

**Mr Abel:** You have done it very well.

**Ms Poole:** So there.

**Mrs Marland:** What do you want, brownie points?

**Mr Turnbull:** So the people who have interest rate increases are just out of luck.

**Hon Ms Gigantes:** No, I do not believe that to be the case. I believe that, as in the past, most landlords will be able to manage their affairs quite satisfactorily. I believe there is room in this legislation for landlords to be able to run their buildings, to pay their costs and to undertake capital works in a way that will provide them with what they need to make a profit, and that will also provide tenants with some sense of security about the rate at which their rents will increase.

**Mr Turnbull:** I can tell you from all the landlords' and tenants' groups I am speaking to that they are not satisfied. I have spoken to the presidents of three tenants' groups in my area in the last three days and they all are not satisfied with this legislation.

**Hon Ms Gigantes:** I think that is probably true in a great many cases. This legislation, as I said, is a set of decisions made by this government about a reasonable kind of balancing of interests of landlords in this province with interests of tenants in this province. It may not be perfect, but it does represent our well-considered and best judgement.

**Mr Mammoliti:** Ask them if it is better than your legislation.

**Mr Turnbull:** One of the trained seals across the road is saying it is better than our legislation. As a matter of fact, quite a few tenants' groups have commented that our rental legislation was better than this.

Interjections.

**The Chair:** Mr Turnbull has the floor.

**Mr Turnbull:** So you will not consider any reflection whatsoever of interest rate increases or decreases in your legislation?

**Hon Ms Gigantes:** Not above guideline, no.

**Mr Turnbull:** And if the landlord has bona fide financing which is arranged at arm's length and the interest rate, when it comes up, is going to push him into bankruptcy as a direct result of the fact that he cannot flow this through, it does not matter?

**Hon Ms Gigantes:** As a direct result of?

**Mr Turnbull:** Of this legislation. Because the financing institutions look at this legislation and reflect on the ability of the landlord to be able to recapture the amount of



money he has to pay as mortgage rate. I mean, that is one of the most fundamental things appraisers do. When they check for a bank or a financing institution, they look at the cash flow and they look at the ability of increasing the cash flow. If interest rates go up and you do not have the ability to pass that through, the financial institution will say, "No, we won't offer a mortgage."

**Hon Ms Gigantes:** It is not a question that the interest rates cannot be passed through. They cannot be passed through above guideline. That has been our decision.

**Mr Turnbull:** That is not a pass-through.

**The Chair:** On that note and it being five o'clock, the committee will adjourn until 10 o'clock tomorrow morning. It would be very helpful if all members could be present at 10 o'clock. We have been losing a little time in these discussions by not having representatives of all parties here at 10 o'clock. This is a complicated and lengthy piece of legislation. It would be helpful to have everyone here. Thank you.

The committee adjourned at 1701.

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## Legislative Assembly of Ontario

First Intercession, 35th Parliament

## Official Report of Debates (Hansard)

Thursday 16 January 1992

### Standing committee on general government

Rent Control Act, 1991

## Assemblée législative de l'Ontario

Première intersession, 35<sup>e</sup> législature

## Journal des débats (Hansard)

Le jeudi 16 janvier 1992

### Comité permanent des affaires gouvernementales

Loi de 1991 sur le contrôle  
des loyers



Chair: Michael A. Brown  
Clerk: Deborah Deller

Président : Michael A. Brown  
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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON GENERAL GOVERNMENT

Thursday 16 January 1992

The committee met at 1021 in room room 151.

### RENT CONTROL ACT, 1991

#### LOI DE 1991 SUR LE CONTRÔLE DES LOYERS

Resuming consideration of Bill 121, An Act to revise the Law related to Residential Rent Regulation / Projet de loi 121, Loi révisant les lois relatives à la réglementation des loyers d'habitation.

**The Chair:** The standing committee on general government will come to order. The business of the committee is to continue the clause-by-clause consideration of section 14.1, a Conservative motion. Mr Turnbull had the floor when we adjourned yesterday at 5 pm.

**Mr Turnbull:** It is quite obvious that the government does not want to listen to any of the discussion we have. There has not been a single item that they have accepted from us. There have been constant interjections. Therefore, I have no intention of continuing with this line of questioning.

**The Chair:** Further questions or comments on section 14.1?

**Mr Ruprecht:** I must have missed something.

**Mr B. Ward:** Welcome to the committee, Tony.

**Mr Ruprecht:** But this is a very exciting committee.

**The Chair:** Welcome, Mr Ruprecht.

**Mr Owens:** In terms of some of the questions that were asked by Mr Turnbull and his colleague yesterday with respect to the numbers of bankruptcies that landlords have suffered, I just wonder if while the parliamentary assistant and the staff are doing the research, they could also take a look at the number of economic evictions that have taken place over the same time periods and perhaps take a look at the case load of the community legal clinics across the province to find out about economic evictions. I do not think it is a one-part question. I do not think you can ask the first question, about landlord bankruptcies, without following that logic through and also asking about the tenants.

**The Chair:** Further questions or comments to section 14.1? Seeing none, is it the pleasure of the committee that Mrs Marland's motion to add section 14.1 carry? All those in favour? All those opposed?

As we have a tie vote, the Chairman must cast the deciding vote. I am told precedent says the Chairman cannot kill debate on the issue and must keep the issue alive. Therefore, the Chairman should vote, according to convention, in favour of the amendment.

Motion agreed to.

**The Chair:** Shall section 14, in its entirety, as amended, carry?

Section 14, as amended, agreed to.

### Section 17:

**The Chair:** So that committee members understand the process, we will be dealing with sections 17 and 18 and then reverting to subsection 13(3), which was stood down. Do I have questions or comments on subsection 17(1)?

**Ms Harrington:** Subsection 15(1) provides for a landlord to base an above-guideline increase application on capital expenditures incurred to a rental unit if there is tenant consent. Tenant consent must occur, on a form to be prescribed, and the tenant must have first been informed in writing of the particulars of the capital expenditure. Note, a technical amendment has been made to subsection 17(1) to replace the words "carried out" with the words "incurred" to provide consistency with subsection 15(1). This amendment clarifies that before any type of capital expenditure is passed through into a rent increase it must have been incurred. This will prevent projected capital expenditures from being passed through.

**Ms Poole:** It has always been the intent of either this legislation or the previous legislation under the Liberal government that capital expenditures should actually be made, else they should not be claimed and there should be no cost pass-through. Since this is merely a technical amendment clarifying the wording, the Liberal caucus will be supporting both the intent and the wording of this amendment.

**The Chair:** Excuse me, is 17(1) an amendment? Oh, the wording change is the amendment.

**Ms Harrington:** Yes.

**The Chair:** Thank you. Further questions, comments to 17(1)? If not, is it the pleasure of the committee that subsection 17(1) carry? Carried.

**Mrs Marland:** You only took the vote. You said, "Is 17(1) carried?"

**The Chair:** Shall 17(1) carry? I did not hear "no." I asked if there would be further questions or comments.

**Mrs Marland:** No, I do not have any other questions, but I wanted to register my vote against it.

**The Chair:** But I did not hear a "no." If you wish a recorded vote, you have to indicate to the Chair.

**Clerk of the Committee:** That is just his first question, "Shall it carry?"

**Mrs Marland:** You have just said, "Shall it carry?"

**The Chair:** And it has carried because no one said "no."

**Mrs Marland:** I am saying "no," Mr Chairman.

**Mr Morrow:** In light of that, can we have 20 minutes?

**The Chair:** We have had a request for 20 minutes. The committee will reconvene at 10 to 11.

The committee recessed at 1030.

1050

**The Chair:** The committee will reconvene. The question before the committee is, all in favour of subsection 17(1) as printed will so signify. Opposed? Carried.

**Ms Harrington:** Subsections 17(2) and 17(3) set out the treatment for capital expenditures that were subject to an advance determination order to which tenants consented at that time. If the capital expenditure is substantially the same, any cost variances shall be considered by the rent officer. A previous tenant's consent to an advance determination application is sufficient if there is a change in tenancy; that is, consent from the new tenant is not required.

Note that there is a technical amendment which has been made to subsection 17(3) to substitute for the phrase "the tenant is not required to consent to the application under this section" the phrase "consent of the tenant to the application under this section is not required." This is to make it clear that consent by the tenant in an advance determination constitutes consent for the purposes of the following application for the rent increase. Some had read it as meaning that the tenant's consent is not required to be given at all in these circumstances.

**Ms Poole:** I just want to ask a question of clarification. My understanding of what this amendment would do would be that if there is an application for an advance determination and a tenant consents to it and at some later point in time a new tenant comes in, the new tenant is not also required to consent. It is basically a technical amendment to ensure that the first tenant is required to consent but any subsequent tenants are not required to.

**Ms Harrington:** Yes, I believe you are right. Any further clarification?

**Ms Parrish:** I would just say that this is in subsection 17(3); it is not in subsection 17(2).

**Ms Poole:** Another point of clarification: The amendment I have before me is only to subsection 17(3). Is there another government amendment which is for both 17(2) and 17(3), or are you incorporating the 17(2) that is already printed in the act with the 17(3) that was submitted later?

**Ms Harrington:** The amendment is to 17(3).

**Ms Poole:** Thank you. That agrees with what I have in my—I am sorry. You are only dealing with 17(2) right now.

**Ms Harrington:** I wanted to sort of do the two together. That is the way I have it.

**Ms Poole:** I am sorry, Mr Chair. I thought we were dealing with 17(2) and 17(3) together.

**The Chair:** We can do that if I have unanimous consent of the committee to deal with subsections 17(2) and 17(3) together, but I cannot do it unless I have the consent of the committee to do that. Do we have unanimous consent to do that? I do. That is fine. Further questions or comments?

**Mr Turnbull:** To the extent that it clarifies for the tenants a clause in this bill, we are very much in favour of it.

**The Chair:** Further questions, comments or amendments? Shall subsections 17(2) and 17(3) carry? Carried. Section 18.

**Ms Poole:** As a point of clarification: In my binder of amendments, I have a Conservative amendment for 17.1, which is a new section.

**The Chair:** A new section?

**Ms Poole:** Yes, section 17.1.

**The Chair:** Oh, section 17.1. Fine; I did not notice it. That is helpful.

Mr Turnbull moves that the bill be amended by adding the following section:

"17.1(1) The landlord may base an application on a specified capital expenditure that the landlord has carried out to the residential complex if at least 75% of the tenants of the residential complex who would be affected by the application consent in the prescribed form to the application in respect of this ground after being informed in writing by the landlord of the particulars applied for."

"(2) If there is an advance determination under section 29 respecting a capital expenditure to which this section applies and the work done or thing purchased is substantially the same as that anticipated in the advance determination, the rent officer shall consider any difference between the actual amount expended and the amount approved in the advance determination according to the prescribed rules.

"(3) If there is a finding in the advance determination that 75% of the tenants of the residential complex who would be affected by the application consented to the application for the advance determination, the consent of tenants is not required under this section even if some or all of the tenants have changed since the time of the advance determination."

**Mr Turnbull:** This essentially is a democracy clause that will allow tenants to approve major capital expenditures to the complex if 75% of the tenants approve and wish this.

**Ms Poole:** This amendment gets to the heart of the issue of tenant consent. Tenant consent is something I am very much in favour of in situations that are not as clear-cut as perhaps others. For instance, in this legislation there is a list of types of capital expenditures, types of major repairs that can be done and where the landlord can apply and get relief from rent review. However, there are other things that are not on that list; for instance, new fridges and stoves. This is a classic example where this was considered to be a capital expenditure under the previous legislation. However, if a landlord wanted to put in new fridges and stoves, this would not be considered to be a necessary capital expenditure under Bill 121 and the landlord could not go to rent review and get an allowance for it.

In many cases—not in all but, I am certain, but in a substantial number of cases—a landlord might say: "This is a very major expenditure for me. If I can't get revenues back in the form of a rent increase to compensate, then I'm not going to put in those new fridges and stoves." In that situation, the only way a tenant could get a new fridge and



stove is if he went out and purchased them himself, which I do not think is the intent we want.

What the Conservative amendment would do in situations like this is allow for consent to be obtained from 75% of the tenants in the building, which is, as you can see, a substantial majority. If 75% of tenants agreed to it, then the landlord could put it through as a capital expenditure. Of course it would be subject to the same cap of 3% per year maximum as any other capital expenditure. In fact, in many cases for fridges and stoves it certainly would not be a 3% increase.

I think this is very worthy of looking at. I know some tenant representatives in the past have expressed concern about tenant consent because they were quite concerned about coercion. They were quite concerned that tenants might feel they were being intimidated or forced to agree to something they did not want. My experience with tenants is that some may well be in danger of intimidation. We have to ensure those tenants are protected, but more and more the majority of tenants now know their rights. They know that if a landlord tries to coerce them or intimidate them, that is not acceptable. Tenants have the protection of law.

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I do not have the section right before me at the moment but later on in the legislation the Liberal Party has tabled an amendment which says that if a landlord uses coercion, intimidation or any type of force against a tenant, the landlord's application would be considered null and void. To me, that is a protection that would ensure that tenants are not subject to any type of intimidation, and at the same time allow tenants what they want in their particular building.

I guess it comes down to a matter of choice. I believe that if a large majority—and I think we all agree 75% is a fairly significant majority—of tenants want something in a building and the landlord is unable or unwilling to provide it unless there can be a rent increase, then surely the tenants should have that free choice. I think that is part of the democratic system.

What we must do is put in a provision to ensure that if they do make a choice, it is a free choice, so the Liberal Party will be supporting this particular amendment by the Conservatives. I hope the government will take a look at that and decide that tenants should be allowed free choice in what they have in their buildings.

**Ms Harrington:** I would like to respond.

**The Chair:** You may respond, if you wish, or we can go to Mrs Marland.

**Ms Harrington:** I think I do have to respond in this case, because what you have just been talking about is in fact what we have already passed in subsection 17(1). There is consent—we have just agreed—that if the tenants want new fridges or stoves, anything in their units, with consent, with the guideline plus the cap, that can be passed through. Now, the effect of the Progressive Conservative motion would be that this same consent would apply to the common areas.

**Ms Poole:** Yes. I stand corrected by the parliamentary assistant, because I used a poor example. What the

government has proposed in this legislation is that if there is en suite work, work within the unit, the tenant can reach an agreement with the landlord.

Perhaps a better example might be a laundry room. There are buildings that do not have a laundry room and tenants do not have access to washers and dryers. The tenants have to go out to a laundromat. This is a common area. It is not en suite. In that particular instance, if the tenants wanted the washers and dryers and the laundry room put in and the landlord was willing to provide it, but only if he or she had a rent increase to cover the cost of it, then under this legislation the tenants would have no right to have the landlord put it in.

I apologize for giving an example that was not appropriate. The parliamentary assistant is quite right in that regard, but there are other examples in a building that might affect the common area.

Another example of a common area item might be that some apartment buildings do not have a place where people can sit down and wait for friends to come by. I know I have one building in my riding that has a high percentage of seniors and there is not really an adequate area for them to sit down and, as I say, wait for taxis and that type of thing. If a large proportion of tenants in the building wanted this type of little waiting-type room created in the lobby, again, they have no mechanism by which to encourage the landlord to do it, because if the landlord does not want to do it the landlord does not have to.

Something like a laundry room may be deemed slightly more necessary than something like a waiting room in a lobby, but there are two examples of situations where there is tenant consent. The basic principle stays the same. If a large majority of tenants want something, who are we to say they should not have a mechanism to get what they want in their buildings?

**Mrs Marland:** I am quite optimistic about the government members finally supporting one of the amendments of the two opposition parties.

**Mr Mammoliti:** We supported the last one.

**Mrs Marland:** I know there is one election promise the government members would not want to go back on and that is their commitment to and belief in democracy and fairness. If it really and truly believes in democracy, I think an amendment dealing with a 75% vote is something that will be quite acceptable to this government. This is the government which believes a 50% vote is enough to unionize a workplace. I am quite sure that if they are in favour of a 50% vote to unionize a workplace, they must be in favour of a 75% vote for the rights of tenants.

If we are dealing with the principle of 75% of tenants having the right to make a determination about their living environment, I think you would be hard pressed, if you were a government member of this committee, not to support this amendment. I do not think you can go through your ideology and philosophy the way you might go through a strawberry patch, picking out which ripe or unripe strawberries you wish to select for your basket.

That is not how it is in the real world. The real world is that if you are going to have any integrity on any



amendment in this legislation, if you are going to have any personal integrity when you look in the mirror in the morning, you are going to have to vote the way you profess to be. If you believe on the one hand that a democratic vote is 50% on one subject, I do not know how you could vote against this amendment which deals with a democratic right by a vote of 75% of tenants in any given apartment building, town house complex or whatever the rental accommodation is.

The interesting thing about this motion of our PC caucus in the interest of tenants is that we are not asking for a simple majority. We have gone as high as 75%. When you know that there are many tenants who have wanted to do a number of things in their apartment buildings and there have been any number of improvements to their living environment in the ways that some of my other opposition colleagues have already addressed, whether it is furnishings or wall finishings, enhancements of any kind at all, maybe even just some major repairs that have not been eligible under other rent controls, these tenants, who are paying rent, should have some rights.

If the government is not willing to accept this amendment and does indeed vote against it, then it is voting against the right to this opportunity of 75% of the tenants in this province, because if 75% of the tenants in any given situation would like the opportunity this amendment provides for them and this government chooses not to even give them that opportunity, then obviously that will be the last we will have to listen to its diatribe and rhetoric about how much it cares about tenants. We will know in a few moments whether the government is committed to the wellbeing of tenants in this province.

We might as well realize that what is happening with section 17.1 is because of the other restrictions in the bill, which are going to be far more limiting on the maintenance and standards in rental accommodation, because of the punitive financial factors in Bill 121, than they have ever been before. We know that for people who choose to live in rental accommodation and people who have no other opportunity but to live in rental accommodation, because they are not able to afford the very steep step to get out of rental accommodation into home ownership, their living environments are going to be far different than they are today in Ontario; very sadly so, I might add.

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I am quite optimistic that we will see the government members in this vote prove that they not only believe in the rights of workers with a 50% vote in favour of unionizing their workplace, but that they also believe in the rights of tenants, who may or may not belong to unions. So I am looking forward to this vote, Mr Chairman. When the time comes that you are through your speakers' list, I would of course request a recorded vote, because I think to have on record a government member who would vote against 75% of the tenants in this province will be a marvellous tool to campaign on in the next election.

**The Chair:** Thank you, Mrs Marland. Of course you will remind me once the question is put.

**Mrs Marland:** Yes.

**The Chair:** Mr Daigeler and then Mr Turnbull.

**Mr Daigeler:** If I understood right, parliamentary assistant, if you would pay attention for a second, your point was that the government accepts these provisions as long as they are renovations to the units but not to the common areas. Could you explain for me why you are making that distinction?

**Ms Harrington:** Yes. We feel that the changes, as Ms Poole has mentioned, whether it is to the lobbies or common areas, work against the affordability of that housing stock. We feel the money from the tenants should go into the structural maintenance of the building. If the tenants consent to above-guideline increases for their own units, that is certainly democracy. That is what the tenants would wish. But I think you can appreciate what would happen within a building if you needed 75% of the tenants to consent to something, the type of possible coercion that might go on to get 75% of all the tenants to agree to have, say, a change in their lobby. We want that housing stock to be structurally sound, we want it to be affordable and we want to maintain it.

**Mr Daigeler:** I heard the explanation, but frankly I do not find it convincing at all. I find it quite inconsistent. You are saying that it is democracy and is all great if the tenants agree there should be renovations to their own units, but that it is no longer democracy if they also agree there should be changes and renovations to the common areas.

I live in an apartment building here in Toronto and I would be glad if there were some changes to the common areas, because there are some renovations needed. For me, the common areas are very much part of an apartment building and part and parcel of the unit I occupy in the building I am in. I fail to see any kind of logic that would accept democracy for a person's specific apartment unit, but no longer democracy when it comes to the hallways and the lobbies and all those other parts that make the environment in which we are living.

**Ms Harrington:** I would just like to point out that what we are talking about here is above-guideline amounts paid by the tenant. The landlord would hopefully be using his within-guideline rents to maintain and to do necessary repairs, whether lobby or whatever. We do not believe the individual tenants should have pass-throughs above the guideline for those things that are not in their units. I will leave it at that.

**Mr Daigeler:** Again, I can accept that the landlord would be encouraged to use the within-guideline increases to make renovations, but that would apply to the whole complex and not just to the common areas. I think the point the Conservative motion is putting forward is that if the tenants are in agreement, not just the majority but a two-thirds majority, in favour of certain renovations, then those provisions should be acceptable to the government as well. You have accepted that principle for a tenant's unit but you have not accepted it for the common areas. That is what I do not understand. That is where the lack of consistency and logic comes in.

**Ms Harrington:** Maybe I could respond with one more example. If you have a building where wealthier



tenants want these upgrades to their building and other tenants cannot afford it, and in effect you would have to have a vote and see if you had 75%, those poorer tenants would be economically evicted from that building if the majority won and the above-guideline increases were passed along to everyone in the building. I think that is a fair scenario.

**Mr Turnbull:** As you saw, Mr Chairman, we called this a democracy clause. Democracy: What a hell of a concept. If 75% of the tenants—I am not talking about 75% of the people who turn out to vote, but 75% of the tenants in a complex—vote for something, the idea that you are going to get coercion with that is ludicrous.

The government, I may say, was elected by 23% of the eligible voters in the last election. If we do not call what all the rest of the citizens of Ontario are going through at the moment, with the horrible legislation, coercion, I do not know what it is. We have a government bringing in labour legislation where it wants to have 50% plus one and it says there is no coercion in that to unionize a company, yet we are suggesting that somehow the government knows best and there will be coercion with 75% of the actual units, not 75% of the people who come out to vote. I think this is paternalistic in the extreme.

In my riding I have some excellent tenant groups that work very hard to protect the tenants. They vigorously put forward their position. I am not going to suggest all areas have such good tenant groups as my area. They are very articulate and very thoughtful about what they do. I recognize you have to have a high number, otherwise there would be the potential for coercion, but at 75% it is absolutely stretching credulity to the thinnest web I can imagine to suggest you are going to get a landlord coercing 75% of the people. This undermines the whole concept of democracy.

If the government is not prepared with section 17.1 to accept that people can openly expect to have a landlord, in free consultation with them, agree to doing repairs or upgrades that they wish—it has nothing to do with the government; the government should not be meddling in this. This is a government that is spending \$1,500 per month in subsidies to non-profit housing, and yet people who are paying less than that are not allowed to upgrade their own buildings when they desire, in consultation with their landlords. It is unfair to the tenants. It is unfair to everybody who lives in rental accommodation that the government says it knows best. You should absolutely be ashamed of yourselves.

How can you reconcile the number of votes you got in the last election and your ability to govern with the number of votes that would be required in this case? It does not hold any water. I certainly intend, if this is voted down, to make a major issue of this when it gets into the House.

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**Mr Ruprecht:** I would be very concerned that if this amendment is not supported you would certainly add to the deterioration, in many cases, of the common areas. The reason I say this is because I had the great pleasure of going with the former Premier of Ontario to—

**Mrs Marland:** What was his name?

**Mr Ruprecht:** Mr David Peterson, the former Premier of Ontario, in case you have already forgotten. I think you should know we went on a mission to Italy and we visited a city called Catanzaro, which is down in Calabria.

**Mr Mammoliti:** That is my home town. Pretty much; very close.

**Mr Ruprecht:** It is a very nice city. It is on a hill and it has many apartment buildings. The mayor of a smaller town outside Catanzaro, Fosato Serallta, lives in one of the apartment buildings in Catanzaro. We visited him.

Interjections.

**The Chair:** Can we have some order? I am trying to hear.

**Mr Ruprecht:** I think we are just enjoying ourselves. This is okay. There is no problem here because it fits right in with what I am really talking about. I can understand that the members of the NDP would certainly be very interested in this because they too might visit Catanzaro and see the problems they might create. To you, Mr Mammoliti, I say that you should probably talk to the members and have them visit so we can come to the same conclusions.

When we went to Catanzaro I visited the apartment of the mayor who lived outside of Catanzaro. I was totally shocked when I arrived at this apartment complex. The common area looked almost like a slum. I thought, how can a mayor of a small town outside Catanzaro live in a place that looks almost like a slum? The reason was quite obvious. Inside his apartment, as in probably all other apartments, it was really beautiful. They were immaculate. This was the case in this apartment complex.

The reason I am mentioning this is very simple. Without the support of the members of the NDP here today, you will be adding to a situation that is not unlike the situation of the mayor who lives in Catanzaro, where the common areas are a shamble and the inside units are simply immaculate and beautiful. I will simply say that I hope the members will have a change of heart and think about the story of our Italian trip so that you will totally understand what you are adding to in the conditions in the city of Toronto, and other places, I might add.

**Mr Owens:** That was a rather enlightening story. I would, however, like to draw our attention back a little bit closer to home, perhaps to some of the buildings that exist in Mr Ruprecht's riding where there are issues that go far beyond the condition of the common areas. While it is not appropriate to ask Mr Ruprecht questions, I would ask rhetorically, through the Chair, if the member thinks that even having 75% of the vote would get these common areas and the more pressing problems within these units fixed.

The members of the third party seem to think this amendment is the greatest thing since sliced bread in terms of tenant democracy, but they seem to neglect to mention, or perhaps think about, a couple of issues. The first issue that comes to mind is what happens to the people, the 25% or whatever number, who would vote against a repair—a marble wall being put in the lobby or whatever—because



they cannot afford the increase. What happens to those people if that vote is carried? Are they forced to look for new, cheaper accommodation? I think the members of the third party have told us that these are also in short supply, so what do we do with these people?

I raised the issue around economic evictions at the beginning of the day, and while you could not trace this as an economic eviction, people would have to leave buildings simply because they would not be able to afford to pay the rent. The question is, where do these people go? I think that if the members of the third party were interested in introducing true tenant democracy in this province, they would perhaps take a look at supporting our minister and the co-op programs we are putting into place across this province, where there is true tenant democracy and tenants decide on their housing charges and participate in the maintenance, and their units are not left at the whim of a landlord.

It is unfortunate that the member for York Mills is not here at this point. I cannot understand in my mind, as a member for almost two years now and as a person who was involved in the community prior to my election, that he does not believe coercion would ever take place. I find that simply hard to imagine based on the complaints that have come to my office about various property managers. We are in the process now of working with one particular set of buildings in my riding, preparing a human rights complaint, but of course harassment would never take place. How does one monitor the votes? How does one ensure that the votes were carried out fairly and that people were not coerced? Again, members of the third party and the official opposition rant and rave about the size of the bureaucracy, but it is an absolutely horrendous thought to try and figure out how one would monitor various buildings each time they took a vote to affect repairs.

In closing, as I said just a moment ago, if members of the third party are so concerned about tenant democracy and want to ensure that tenants have a full say in their units, then instead of criticizing the government on its housing programs around co-ops, they should get on the bus and support the programs, because that is where true tenant democracy comes in. There is no coercion, things are done in an orderly fashion, money is set aside for repairs, repairs are done and we do not have to worry about monitoring systems.

**Mrs Marland:** It is really educational to hear an NDP government member talk about coercion of tenants when we are talking about 75%. I wonder how he feels about coercion of workers when, as I said earlier, they want to unionize a workplace with 50% of the votes in favour of unionized workplaces. Anyway, I know they are experts in coercion. I do not think the members present are probably members of unions; I doubt whether they are actually.

**Mr Owens:** On a point of order, Mr Chair: Can I request that the member withdraw that remark. Assigning motives and accusing members of Parliament of coercion is completely inappropriate. If she has facts on this issue, I would ask her to present those facts at this point or withdraw the remark.

1130

**The Chair:** I am sorry, Mr Owens. Unfortunately, I was speaking with the parliamentary assistant and did not hear Mrs Marland's comment, but I would caution all members to be careful not to impute motives to any members of the Legislature.

**Mrs Marland:** Unfortunately, they jumped at the bit before they heard my full sentence. When they reread it in Hansard, they will realize that I said something other than they immediately reacted to. I will be happy to respond if they are still concerned after they read Hansard, but I do not think there is anything there they would want me to withdraw.

I would like, however, to ask the parliamentary assistant to explain her answer about the fact that she would be willing to have this amendment apply to inside the individual units, if that is what she said. If I misunderstood, perhaps she can explain it to me. How would you apply a 75% vote of tenants to inside their units?

**Ms Harrington:** Mrs Marland, we have dealt with subsection 17(1) in which, I believe, it clearly states that if a tenant consents to capital expenditures within his unit, he can have above-guideline increases to pay for that.

**Mrs Marland:** How democratic do you think that is when that tenant moves out and now we have a new established benchmark for the rent on that unit? Are you saying then, to follow your line of support, that an individual tenant can approve individual capital improvements to his unit and therefore agree with the landlord to pay a higher rent to compensate for that work? Is that what you are saying?

**Ms Harrington:** Yes, I believe that is what subsection 17(1) says, if it is a capital expenditure like a fridge or a stove. We also have a costs no longer borne provision, which is not this section, so that when that is paid for, the rent then would be reduced accordingly.

**Mrs Marland:** Right. Does your bill limit that eligibility for capital improvements within the unit to appliances or could it apply to a realignment of walls or something structural in the unit?

**Ms Harrington:** The section does not limit.

**Mrs Marland:** It does not have any limitations?

**Ms Harrington:** That is correct.

**Mrs Marland:** So what you are saying is that if the tenant requests that work, agrees to pay the higher rent and then is transferred out of the area, requiring him to vacate the unit, then it is okay with you that the next tenant coming in pays a higher rent?

**Ms Harrington:** The tenant coming in would have the opportunity to find out what the rent is and make that decision before moving in as to whether he could afford it. I certainly appreciate the point you are making, that in this case where the tenant who agrees to this moves out, in this particular unit the rent does increase for a certain period of time. Yes, I think you cannot make everybody happy all the time. That is true.



**Mrs Marland:** Let's just deal with this, because you are saying that the rent increases for a certain period of time. Maybe we need to have Ms Parrish help us with this.

**Ms Harrington:** What is your question?

**Mrs Marland:** If the rent is increased because of a request for a capital improvement, are you saying that after the capital improvement is paid for, the rent is then decreased?

**Ms Harrington:** That is what I have said.

**Mrs Marland:** Is that so?

**Ms Harrington:** Would you like to comment?

**Ms Parrish:** Yes. That is what the costs no longer borne proposals say. I do not think you have actually voted on those provisions yet, but that is what they say.

**Mrs Marland:** I can understand, then, why it puts the rent structure in even greater jeopardy. You are agreeing not only to allow rent increases for eligible major capital improvements on a building to be applied through the costs no longer borne provision, you are now saying individuals can have improvements made to their individual units that can also set a new rent for that unit for a period of time, which I assume is three years. Is that right?

**Ms Harrington:** Is there a lid on it?

**Ms Parrish:** No.

**Ms Harrington:** No, there is not a lid. It is 3% above guideline. Mrs Marland, your position seems very inconsistent with what you and your colleague have just been espousing, that you would want this for the whole building, the common areas included, to be able to go up. Now you seem to be saying that you do not even want things within the unit to be—

**Mrs Marland:** Let's be very clear about this. I am not changing my position. I am trying to find the logic in your position. I am trying to understand the logic in your position. You are saying it is okay to do it unit by unit. I am trying to understand why it is okay to do it unit by unit through single units and yet it is not okay to support my amendment. I find this really interesting, because you are saying that if as an individual tenant I would like some capital improvements in my unit, I may apply for those as long as I am willing to pay for them.

I would like to know what the difference is if I am saying I would like some capital improvements outside my unit, but which are still part of my home, my living environment from the moment I step off the bus or out of my car and I am now on the property where I live, which is my home. I may like to have some well-kept lawns, some nicely landscaped gardens, and then when I get inside the building I may like some other things. What you are saying is: "No, you can't have those. That's not your right. It's not your right even if 75% of you want them. However, if you want to have improvements within your little individual unit, I can agree to that even though if you have to move now, the base rent set for that unit has now been escalated by the individual choice of one individual." I think this is absolutely unbelievable.

The rights of one that can affect one unit is okay for you and then the rent is then set. I am asking how long it is

set for. I asked, "Is it two years or three years?" and you are saying there is no limit. So can I please have the answer?

**Ms Harrington:** Mrs Marland, the answer is this: We believe the person can make the decision whether or not he himself wants to pay more, but cannot make the decision for others.

**Mrs Marland:** This is great. Okay, so now I have my unit and I am going to ask for some improvements. There is a contractual agreement between the landlord and me that I would like these improvements in my unit and I am willing to pay a higher rent for it. You are saying the contractual agreement is only between that current tenant and the landlord, so what happens when the tenant moves out? Is the landlord left with the bill and the rent reverts to a lower rent?

**Ms Harrington:** That was explained in the section we just voted on.

1140

**Mrs Marland:** I am asking you to explain it to the people who are watching, who do not have the benefit of the section in front of you.

**Ms Harrington:** I did read it into the record about if the tenant moved out and a new tenant moved in.

**Mrs Marland:** Yes.

**Ms Harrington:** That is directly on the record.

**Mrs Marland:** Am I correct then that after a rent increase has been agreed to between the tenant and the landlord for a capital improvement within the unit, if that tenant moves out, the rent reverts back to the rate before the capital improvement?

**Ms Harrington:** No, Mrs Marland, it does not.

**Mrs Marland:** It does not. So I was right in the first place, which is that when the tenant—

**Ms Harrington:** I explained—

**Mrs Marland:** Well, tell me. They cannot both be right. When the tenant moves out, does the rent stay at the escalated cost?

**Ms Harrington:** I just said that, Mrs Marland.

**Mrs Marland:** All right. For how long can it stay at the escalated rate, until the capital improvement is paid for?

**Ms Harrington:** Yes.

**Mrs Marland:** How long may that be?

**Ms Harrington:** There are amortization tables that will be used, which have in fact been used for years. I think they will probably be updated as to the life of the improvement or the appliance or the windows, whatever it is.

**Mrs Marland:** Okay, I am right then that the new rent is set for ever or for—I understand the tables to which you refer, but then how can you say it relates to the provision of the costs no longer borne? It does not if it is then part of the amortized rent over a period of time for the life of the improvement.

**Ms Harrington:** Once the time is up, with this legislation—we have not passed that section yet—the rent would decrease once the capital expenditure has been paid for. In the Residential Rent Regulation Act, that expenditure then would just continue and be added to the rent and increase every year with the percentage increase. We are saying that it is much fairer, once that cost has been paid for, to take it out of the base rent. That will be explained as we go through. We have a lot of other sections to deal with, but it does not directly apply at this—

**Mrs Marland:** In relation to the Conservative amendment that is on the floor now, it is very difficult to understand why the provision you have just described is fairer than this amendment, because you are allowing individual tenants to increase their rents, basically, are you not?

**Ms Harrington:** We are allowing individual tenants to agree to decide with their landlord if they would like improvements within their units, yes.

**Mrs Marland:** That is right. If you are interested in protecting the majority of tenants in this province—would it be a fair assumption to say that the intention of your government is to protect the majority of tenants in this province?

**Ms Harrington:** Yes.

**Mrs Marland:** All right. If that is the case, then can you tell me how you would support a policy that allows the rich tenants to escalate the rents of individual units by their own individual choice?

**Ms Harrington:** Mrs Marland, I think you are really trying to be a little obtuse here. Are you disagreeing with the intent of what we have just passed in subsection 17(1)? Is that what you are telling me? That is what I am hearing.

**Mrs Marland:** No, I am not being at all obtuse. I am simply saying that your government cannot on the one hand say that individual—what you are saying I think is really ironic when you are trying to protect tenants. I would think, if you are trying to protect tenants, you are trying to protect present and future tenants. I think it is ironic that you are saying it is okay for individual tenants who can afford to pay higher rents on their individual units, based on their individual requests to their landlords to make changes to those individual units.

I find it really interesting because I am sure you also agree with the limitation where even if tenants want to make major—obviously, because you are not going to support my amendment—changes to their buildings, you think that is unjust, and yet you are giving individual tenants the right to increase the rent on their units. It is beyond me. If you get a whole lot of wealthy tenants who can afford major improvements and the improvements are made, then those rents are set for the life of whatever that improvement is, and in a blanket way you have agreed that on any number of units the rent may be increased to accommodate the wishes of the individual tenant.

On the one hand, you are saying you want to protect tenants and control rents. On the other hand, you are giving the individual rights for individual units' rents to be changed. We are very clear on that now and I thank you for the explanation. I think the public is going to be very

interested, because what we are saying in this amendment is that if 75% of the tenants in a building are interested in improving their living environment, at least give them that opportunity.

What you are doing is saying that maybe if any percentage of the tenants in that building want to improve their own individual units and pay higher rents, they can, but there is no binding contract that they have to stay there for the life of the improvement. If you were to say to a tenant, "We think it's all right for that rent to be increased so much per month if you are going to be here four or five years," or whatever the life of the improvement is—but you are not saying that. You are saying, "You can ask for what you like; if you can afford it and you can pay for it, you will get it," and the poor soul who, because there is no other rental accommodation, has to move into that higher rent unit after they move out is out of luck.

**Ms Harrington:** Mrs Marland has been saying what we think tenants should pay for, but what the PC motion says is that the tenants can put up rents for other tenants, and that is what we do not agree with. The cap on this, as you know, Mrs Marland, is 3%, so there is control in the amount the rents would go up.

**Mrs Marland:** Well, excuse me. You are saying as well that they can put the rent up for other tenants, because as soon as they move out of that unit with an inflated rent, that is where the rent is. It is already up for the next tenant, so I am sorry—

**Ms Harrington:** Mrs Marland does not agree that tenants should have that individual right. That is what she is saying.

**Mrs Marland:** What you are saying, Madam Parliamentary Assistant, is—

**Ms Harrington:** I know what I'm saying.

**Mrs Marland:** —that individual tenants can set their rents and it does not matter whether those rents then become prohibitive and make more units inaccessible, because of their increased rents, to people who do not have the money to afford them. Obviously, when they ask for an increased rent because they can afford it and they want to improve their unit, that is where it is for the next tenant. So you have already established a higher rent and affected the market of affordable housing in this province by doing it. That is very interesting.

**The Chair:** If the committee will just allow me to ask a question of clarification relating to both subsection 17(1) and this proposal, section 17.1, am I to understand that both the 3% cap and the carry-forward of three years applies to this? I just want to understand.

**Ms Parrish:** The 3% cap applies, whether it is necessary capital without tenant consent or en suite capital. It always applies, and there is always a three-year period to pay for it: the first year plus two years carry-forward.

1150

**Mrs Marland:** If there are three years to pay for it, are you saying the rent increase only applies for those three years?

**Ms Parrish:** No.



**Mrs Marland:** So why do you not protect the tenants from the increased rent after the item is paid for?

**Ms Parrish:** We do, once it is completely paid for. What happens is that when the amortized period runs out and the item is completely paid for, the capital allowance is taken out of the base rent. The three-year period allows the landlord to bring in costs over a longer period so that they gradually bring in to the full amount, but they may have 10 years to actually pay for this thing. In the case of an appliance, it might take 10 years to pay for it.

**Mrs Marland:** The rent is escalated for 10 years.

**Ms Parrish:** It is not escalated. At the end of the three-year period, it is fixed. In theory, they could get as much as 9%. They just get it over a longer period, above guideline. At that time, the rent is fixed, and then at the end of the period of time when the item is paid for, it is withdrawn from the base rent, because tenants should not be expected to pay for an item that is already paid for.

**Mrs Marland:** When I said if it is escalated—maybe “escalate” is the wrong word. Is it increased at the beginning of the three years and decreased at the end of the life of the full payment? I am asking Ms Parrish.

**Ms Parrish:** I am afraid I have to defer to the Chair as to whether he will allow me to answer your question.

**The Chair:** I will permit the answer, but I have a supplementary to my own question.

**Mrs Marland:** I am sorry.

**Ms Parrish:** I apologize. The way it works is, suppose the landlord and the tenant have agreed they wish to have a new refrigerator. The cost of a new refrigerator—let’s just make it simple. We will say it is a \$1,000 refrigerator and we say that after 10 years refrigerators die, so we say it has a 10-year amortization period. We then calculate the rent and we say that the tenant will pay off the full cost of this refrigerator over 10 years, and it is amortized just the way you do your mortgage.

What happens is you do this calculation. Like most lawyers, I am a lawyer because I am poor at math, so I do not know how that would work out, but let’s just pretend it is \$72 a month or something to pay for this refrigerator and that happens to be within the 3% cap. The tenant pays the \$72 a month for 10 years and at the end of this 10-year period he has paid off the amortized cost of the refrigerator and the rent is reduced by \$72.

That system would be the same whether it was a consent item, a refrigerator, or whether the tenant was paying for the underground parking garage or the elevator repair. It is the same system.

**Mrs Marland:** What is so interesting is that if the life of the refrigerator is 10 years and for 10 years they have paid an increased rent, at the end of 10 years they are still going to need another new refrigerator. This is absurd.

**The Chair:** We are going to discuss the costs no longer borne provisions later.

If, for example, as a tenant I worked out a deal with my landlord for increased rent for whatever and the agreement was the 3% would be passed on for three years, and then in the second year the landlord did capital repairs that were

eligible for the 3% increase, or in fact there was an extraordinary 3% operating cost increase, how does that work?

**Ms Parrish:** The landlord would be unable to apply if he had taken the full amount of the increase. If he had taken the full 3%, then he would have used up, essentially, his ceiling and he would not be able to apply for another increase, so obviously tenants and landlords would have to think about whether they wanted this particular en suite repair. Bear in mind that landlords do not have to agree to this. This is consent on both sides. The landlord and tenant have to agree that they want to make an expenditure and the landlord has to decide, based on his or her long-term capital plan for the building, what he or she wishes to do.

**Mr Mammoliti:** The argument that Mrs Marland brings up in reference to tenants having 75%, in reality looks good and I am not going to say it does not. I am one for democracy, no question about it, obviously. But what Mrs Marland seems to forget is that it would not work. We touched a little bit on coercion. My colleague touched on coercion somewhat earlier. She talks a little bit about unions and how if we believe in unions, then we would believe in this sort of approach. Hearing that from somebody who knows pretty much squat about unions, I feel compelled to let her know why it would not work.

With a union, yes, there is the ability to vote and there is the democracy, but there is also a lot of frustration. There are a lot of individuals who need to know more about legislation and need to know that if it were not for some legislation, their votes would be more effective. I guess what I am saying here is that legislation should be implemented, education should be implemented and it should take its course, because with legislation comes education.

I am going to relate this to her argument by saying that with legislation and with our legislation, then comes education. I think it is the obligation of every one of us in this House to go back after the legislation is put through and let the tenants know their rights, let them know what the law says, and then maybe one day down the road some time we could implement something like the tenants voting on such a thing.

If this does not happen and if the course does not take its route, the coercion takes place. The landlord is then able to coerce the tenants. The landlord is able to because the tenants are not that educated in their rights. I see that every day in my riding. Tenants are not that educated when we talk about the legislation and when we talk about their rights. It is our obligation as members to do that. So I am not saying I disagree with the Conservative member on the idea. What I am saying is it is too early. We have to do our jobs first as members, educate the tenants first and let them know of their rights so they do not get coerced, and then do it.

There is a prime example in my riding. As you know, I love to give examples. The Sorbara buildings keep popping up in my riding, just a prime example of tenants who do not know their rights, who do not know their obligations and their rights as tenants. It is happening

consistently, phone calls from that particular building saying: "What am I to do, Mr Mammoliti? The landlord is not telling me the truth."

Mr Chair, I see it is 12 o'clock. I would like to continue. There are only a couple of more minutes, I think, in what I would like to say. If you want me to continue, I will do that now.

**The Chair:** I think perhaps we could pick this up at 2 o'clock.

**Mr Mammoliti:** I was on a roll here, Mr Chair, but that is okay.

**The Chair:** I am sure you will pick right up.

**Mrs Marland:** Mr Chairman, just before we adjourn, could you confirm how many voting members we have of the New Democratic socialist government? We have seven government members sitting here.

**Mr Abel:** Six voting members.

**Mrs Marland:** Thank you.

**The Chair:** The committee is adjourned.

The committee recessed at 1200.



## AFTERNOON SITTING

The committee resumed at 1410.

**The Chair:** The standing committee on general government will come to order. At the completion of this morning's deliberations, Mr Mammoliti was speaking to section 17.1.

**Mr Mammoliti:** As you recall, Mr Chair, I spoke a little bit about some of the comments Mrs Marland made in reference to unions and tenants and how she feels it is related to section 17.1. I explained how essential it would be for us to educate the tenants and make sure they know their rights and what the legislation means, and to have appropriate legislation. For the first time, I believe, we are on the right track in terms of appropriate legislation for both landlords and tenants.

The past couple of hours have been pretty frustrating for me. I got a call from one of the tenants in my riding. I brought up this example a couple of days ago in reference to a building at Weston Road and Finch Avenue that has been neglected. Ironical as it may seem, a roof collapsed recently in the lobby. A pipe had burst. That happens in a lot of buildings, but the point in this particular case is that the landlord had gone and made the emergency repairs and left the lobby in a shambles. It has been like that for approximately 24 hours. It is unsafe from what I can gather. I have not had a chance to go there and actually visit the site, but my assistant has and she informs me she is a little concerned about it. As well, we had a major snowfall recently and the snowfall was quite heavy. Somebody slipped there yesterday and fell and was actually hurt because the snow had not been removed.

**The Chair:** Mr Mammoliti, you could relate this to section 17.1, please.

**Mr Mammoliti:** In reference to section 17.1, when a building such as this one has never really had maintenance provided, and it has accumulated to a degree where capital expenditure has to occur, the tenants would not have a choice but to vote yes for capital expenditures; 75% of them probably would. But the point is that they are forced to do it because of neglect, and that is how this ties in to 17.1. In this particular case, those tenants would not have a choice but to vote yes because of neglect—years of neglect, I may add.

In the same building, the individual who has chosen to represent those tenants most recently and to work with my office has been threatened. From what I can gather, the superintendent is being questioned. They thought he was carrying a gun in the building.

**Mrs Marland:** I am going to raise a point of order, Mr Chairman. I am very reluctant to do this, because I know how antsy the member for Yorkview gets if I raise a point of order.

**The Chair:** The point of order, please.

**Mrs Marland:** I do not want to upset him, but frankly I would rather hear his Robin Hood story than for him to be so far off track. My point of order is that I do not think his discussing the examples he has given so far for

this particular building of which he speaks is on my amendment.

**The Chair:** Thank you, Mrs Marland. As you would know, the Chair has exercised a great deal of latitude in allowing members to speak to each individual clause and/or amendment, and Mr Mammoliti in my view has related to section 17.1 in his discussion, albeit he is stretching the point at times. You may continue, Mr Mammoliti.

**Mr Mammoliti:** Thank you, Mr Chair, but I think you would agree with me that at times it is important to stretch the point so that people can understand what the situation is actually like out there. In this case I do not think I am stretching the point, because in this particular case the tenants would not have a choice but to vote yes if this amendment goes through. I do not agree with that because the building has been neglected. Nothing has been done. They would have no choice but to vote yes for capital expenditures. I do not think it is their responsibility. I think it is the landlord's responsibility. Frankly, the points of order that keep coming up from Mrs Marland are out of order themselves, as far as I am concerned. I think she wants the song and dance, she wants the cameras on her at all times. Every time somebody else speaks, she interrupts—rudely, I may add.

**The Chair:** Mr Mammoliti, it will work a lot better if we try not to impute motives to other members of the committee.

**Mrs Marland:** It is going to work much better next week when we are off camera, George. You will be able to stay away.

Interjections.

**Mr Mammoliti:** I will hold off on this one for a second, but in relation to what Mr Ruprecht was saying this morning, he had visited Italy and—

**Mrs Marland:** You pronounce the Italian names very easily.

**Mr Mammoliti:** —he talked a little bit about slums and rent control, and he related rent control to slums. I want to just touch on that a little bit because I frankly cannot accept—they keep bringing this up about slums and how rent control is going to bring in slums. I cannot understand for the life of me why this argument comes up, especially when it was his government that brought in rent review, a system that was supposed to be a haven for landlords, a beautiful way of making the profit they want and upgrading the buildings and making them a beautiful and better place to live.

I can point out a number of buildings such as the one I am referring to at Weston Road and Finch—for instance, the Sorbara buildings in my riding—that have taken advantage of rent review. People still consider these examples I am giving slums, so how can you relate rent control to slums when the system this individual was a part of, the rent review system—

**Mrs Marland:** On a point of order, Mr Chairman: It is rather unique to have a Conservative member defend a Liberal opposition member, but I think this member for the government is impugning the motives of a Liberal member who happens, by coincidence, to be running to be leader of that party. I think it is totally inappropriate for him to impugn the motives of Mr Sorbara or any relation of his in the management of buildings. Mr Mammoliti did this yesterday and he is way off the subject of section 17.1, which deals with 75% voting for improvements to buildings.

**The Chair:** I do not believe in this case it is a point of order, but Mr Mammoliti is getting awfully close to a point of order, so I suggest to him that as he makes his comments, he remember that impugning the motives of members of the Legislature is something we frown on.

**Mr White:** The Sorbara Group and Mr Greg Sorbara are totally different entities. Mr Sorbara does not have a direct interest, I am sure, in that group.

**The Chair:** It is not up to this committee to decide Mr Sorbara's interest in those buildings, although I believe you are correct.

**Mr Mammoliti:** I cannot understand why I am close to being out of order, Mr Chair, when I am relating Mr Sorbara's buildings to section 17.1 itself, in that, again—I will say it for the second time—the tenants would not have a choice but to vote yes if something should occur and if capital expenditures should arise, due to neglect. In my opinion there is a lot in those buildings that has occurred that is borderline neglect, so it does relate to section 17.1. I am going to have to disagree with you and say that I am not out of order at all. I am not even close to being out of order.

The arguments of both the Conservatives and the Liberals only prove to me that their only concern is that the landlords continue taking advantage of tenants and that if the landlords want the profit and want to make themselves richer, if they are rich, this should continue to happen and the tenants be neglected.

1420

**Mrs Marland:** On a point of order, Mr Chair: Yesterday, the parliamentary assistant drew to the attention of the Chair imputing motives by saying what another member was intending by his or her comments. This member is saying our arguments support a position of landlords making people rich etc. I suggest he is way out of line suggesting what our arguments support because of his own interpretation.

**The Chair:** Mr Mammoliti, would you continue carefully?

**Mr Mammoliti:** I will let the people at home determine what their arguments stand for and what they really want out of their term of office. The other day I was putting my little girl to sleep. Every night I am home, when I am there, I read her a little story. The other day I read her the story of the Three Little Pigs and I could not help relating this to section 17.1—

**The Chair:** I am very interested in this.

**Mrs Marland:** Seventy-five per cent of the Three Little Pigs were doing what?

**Mr Mammoliti:** —and how the past government and the government before that related to section 17.1, perhaps, and the Three Little Pigs. I believe that in a lot of cases I can honestly relate some of the landlords, even in my riding, to being the Big Bad Wolf in the Three Little Pigs story, and how they continually—

**Mrs Marland:** The Big Bad Wolf was not in the Three Little Pigs.

**The Chair:** Wrong story.

**Mr Mammoliti:** Who was the one that huffed and puffed, tell me?

**The Chair:** You are not going to create the Three Little Pigs story here.

**Mrs Marland:** George Mammoliti was the one who huffed and puffed.

**Mr Mammoliti:** It was the wolf. This huffing and puffing occurs by landlords wanting more and more money, and if the money does not come, if they do not get that extra buck they want, they will not do those repairs in your building. Those threats continue to happen. "If we do not get that money, we will huff and we will puff until that building falls apart." That, in my opinion, relates to the the Three Little Pigs pretty good, I would think. The first house, of course, was blown down because there was a lot of huffing and puffing and no work done to the first place.

The second place was made out of twigs. There was a lot of huffing and puffing and no work was done to the building. The third building was out of brick. Of course, the NDP being in power at the time prevented that wolf, that huffer and puffer, from blowing the house down. I would say those wolves will continue huffing and puffing even though—I cannot help laughing.

**Mr Daigeler:** What about the pigs?

**Mr Mammoliti:** Even though these committee hearings continue, you are going to hear that huffing and puffing and I am proud to be a part of government that is like that brick house—

**Mrs Marland:** That huffs and puffs.

**Mr Mammoliti:** —that will not allow somebody to blow it down because he want to neglect it. I can see by the laughter that people are having a good time.

**Mrs Marland:** Even in the translators' booth.

**Mr Mammoliti:** At times it is nice to laugh and have a good time, and I am glad I can do that, but if people think seriously about the example I just gave and about that little story, you can see why I thought of section 17.1 and why I thought of rent control as so important while I read that story to my little girl.

We talked a little bit about coercion this morning as well. Coercion exists even in the building I used as an example this morning and just now at Weston Road and Finch Avenue with the roof falling apart. The person who represents the tenants has been threatened by the superintendent, as I said before I was rudely interrupted. The police department is now looking at whether or not the superintendent has been carrying a gun and has been threatening the individuals who live in that unit. Is this going to happen if section 17.1 comes into play? Will guns



be carried by superintendents to force 75% of the tenants to vote in favour of the landlord?

**Mrs Marland:** On a point of order, Mr Chair: There is a lawyer on your side of the room. I would suggest to the Chairman that Mr Mammoliti is treading very dangerously at the moment in terms of identifying a building and making a suggestion that a superintendent of that building is carrying a gun, which would be illegal. He is now making charges in his speech that not only do not relate to this amendment before us, but are also dangerously close to causing a problem for an individual who is not here to defend himself. I think it is totally inappropriate. He would be better to go back to talking about the Three Little Pigs, because at least then he is not hurting anybody except his own integrity, which makes him look like what we know he is.

**The Chair:** As Mr Mammoliti would know, all members of a committee enjoy, while they are sitting in committee, parliamentary immunity and things that might happen if you make a statement as a member outside of this room cannot happen in here because of parliamentary immunity. I would caution members, however, that they should try to avoid making any comment on any subject that would be different in here than it would be outside.

**Mr Mammoliti:** While Mrs Marland was speaking, I asked the lawyer for his opinion and the lawyer on this side told me not to listen to Mrs Marland, that she obviously does not know what she is talking about.

As I was saying, if section 17.1 is implemented and if this amendment goes through, as to this superintendent I am talking about who carries the gun, will this happen consistently? Will that coercion happen all over the place to get that 75% she is calling for? It only proves to me that my theory is right, that we should be educating first, that we should be legislating properly and that then maybe one day this amendment could happen.

I understand we have had a lot of debate on this and my colleagues on both this side and also on the other side are interested in voting. I would like to call the question at this time.

**The Chair:** Mr Mammoliti has moved that the question be now put.

**Mrs Marland:** Is it in order to call the question when you have already spoken to it?

**The Chair:** Yes, it is.

**Mrs Marland:** Even if there are other people on the list?

**The Chair:** Yes.

**Mrs Marland:** Even if it is not his amendment?

**The Chair:** It is in order.

**Mrs Marland:** No, it is not.

**Mr Daigeler:** Could I hear how many speakers are still on the list?

**The Chair:** I have to put the question, Mr Daigeler.

Shall Mr Mammoliti's motion that the question be now put carry? All in favour will say "aye." Opposed?

Motion agreed to.

**The Chair:** I will now put the question on section 17.1.

**Mr Daigeler:** Could I have a 20-minute recess?

**The Chair:** The committee will adjourn until nine minutes till 3, when the vote will be taken.

The committee recessed at 1431.

1452

**Mrs Marland:** Mr Chair, I asked for a recorded vote.

**The Chair:** A recorded vote: We are voting on section 17.1, on Mr Turnbull's motion.

The committee divided on Mr Turnbull's motion, which was negated on the following vote:

#### Ayes-5

Daigeler, Marland, Poole, Ruprecht, Turnbull.

#### Nays-6

Abel, Harrington, Lessard, Mammoliti, Owens, White.

**Mr Owens:** Mr Chair, on a point of order: This morning I raised an issue. The member for Mississauga South had made remarks about the NDP government and particularly myself being experts at coercion. I have the Hansard here and these remarks are clearly indicated and I will read them for the record.

**Mrs Marland:** Would you tell me what page you are on?

**Mr Owens:** It is 1130-1.

**Mrs Marland:** Thank you.

**Mr Owens:** "It is really educational to hear an NDP government member talk about coercion of tenants when we are talking about 75%. I wonder how he feels about coercion of workers when they want to, as I said earlier, unionize a workplace with 50% votes in favour of unionized workplaces. Anyway, I know they are experts in coercion. I do not think the members present are probably members of unions. I doubt whether they are actually."

Mr Chair, I stated this morning that these remarks are inappropriate, and I would suggest again that the member withdraw those remarks.

**Mr Mammoliti:** Shame.

**The Chair:** Just give the Chair one moment to review it. As I recall, this morning I had not heard those comments we are talking about.

**Mrs Marland:** He wants me to withdraw them.

**The Chair:** Mr Owens, I will reserve my decision until I have had a chance to look at the Hansard a little more carefully.

Section 18:

**The Chair:** We will move on to subsection 18(1).

**Ms Harrington:** Subsection 18(1) allows the landlord to base an above-guideline increase application on new or additional services for a rental unit if there is tenant consent. Tenant consent must occur on a form to be prescribed and the tenant must have first been informed in writing of the particulars of the service. This goes along with the previous subsection we moved.

**The Chair:** Questions, comments or amendments to subsection 18(1)?

**Ms Poole:** Mr Chair, in my book I have clause 18(1)(b), which is a Conservative motion.

**Mrs Marland:** Yes, that is what I have too.

**Ms Poole:** Are we dealing with clause 18(1)(a) right now or subsection 18(1)?

**The Chair:** We are dealing with subsection 18(1), which is printed, I think, in the original legislation.

**Ms Poole:** Okay. So we are not dealing with the Conservative amendment 18(1)(b) then at the same time, just 18(1)?

**The Chair:** As a matter of fact, I do not have in my packet a copy of the Conservative amendment.

**Ms Harrington:** Can I share with you?

**Ms Poole:** I think that was a new Conservative motion about equalization of rents which is quite similar to the one the Liberal caucus had filed for section 22.1 at the beginning of the hearings. But it was a fairly new one, so you may not have it in your package.

**The Chair:** Ms Poole, I will accept comments to subsection 18(1) at the moment. We just had legislative counsel speaking with the Conservative caucus.

**Mrs Marland:** Yes, and unfortunately, because I was discussing the 18(1)(b) amendment of ours with the legislative counsel, I was not able to hear the comments from the Liberal critic.

**The Chair:** The Liberal critic just pointed out that we had an amendment from your caucus and she was wondering which one we were dealing with.

**Mrs Marland:** Yes, but I do not have a government amendment.

**The Chair:** There is no government amendment.

**Mrs Marland:** Oh, you are just reading it out of the act.

**The Chair:** She did not read it out of the act; she just gave an explanation for the section.

**Mrs Marland:** Of subsection 18(1) as printed in the bill?

**The Chair:** Yes.

**Mrs Marland:** I see. Thank you.

**Ms Poole:** This is just a point of clarification. I would ask the parliamentary assistant or Ms Parrish to ensure that I am correct in my interpretation of this section. This section says that if a landlord has a new service he or she is offering to the tenants, and if there is consent by the tenants, the landlord can make application for this. Is that the correct understanding of that?

**Ms Harrington:** I will ask Ms Parrish to clarify it. It is a very technical thing.

**Ms Parrish:** Yes, you are correct in your assessment. This is parallel to section 17 which allows for en suite capital. This is en suite services with tenant consent.

**Ms Poole:** Could you give us an example of some of the services you think might be included in this particular section?

**Ms Parrish:** Air conditioning services, security services such as an alarm bell or something of that kind, housekeeping services.

**Ms Poole:** I have no further questions. I think this is a good section of the act, to allow new services to be provided so that tenants can have the type of building they wish to reside in.

**The Chair:** No further questions, comments, amendments to subsection 18(1)? Shall subsection 18(1) carry? Carried.

1500

**Mrs Marland:** Mr Chairman, I would like to clarify my amendment, which would have been clause 18(1)(b), the amendment that is tabled with you. I am grateful to the legislative counsel who has pointed out that for what we are trying to accomplish with this amendment, it may not be appropriate to have the amendment placed in this section of the bill, so if I could have the concurrence of the committee, I would like to withdraw this amendment at this time and find a more appropriate place in the bill where it may be placed.

**The Chair:** You actually have not placed it, so that would be fine. Now we will move on to subsection 18(2).

**Mrs Marland:** All right.

**Ms Harrington:** May I deal with subsections 18(2) and (3) together?

**The Chair:** Would the committee entertain dealing with subsections 18(2) and (3) together?

**Ms Harrington:** It is similar to the way we dealt with subsections 17(2) and (3). In fact it is a parallel-type. Subsections 18(2) and (3)—

**The Chair:** Just one moment until we decide whether it is agreed.

**Ms Poole:** I just want to check, Mr Chair, because subsection 18(3) is a government amendment, so I want to have an opportunity to read it before giving that consent.

We will consent to doing the two together.

**The Chair:** We have unanimous consent to deal with subsections 18(2) and (3) simultaneously.

**Ms Harrington:** Subsections 18(2) and (3) set out the treatment for services that were subject to an advance determination order to which tenants consented at the time. If the service is substantially the same, any cost variances shall be considered by the rent officer. A previous tenant's consent to an advance determination application is sufficient if there is a change in tenancy, ie, consent from the new tenant is not required. Ms Poole noted that in subsection (3) there was a technical amendment similar to the one in subsection 17(3). Are there any questions?

**Ms Poole:** The Liberal caucus will support these two sections. It really is just trying to reduce some of the bureaucracy involved in trying to get consent a second time and holding up the procedures when the consent of the first tenant has already been procured, so it would seem to me eminently logical that we accept this particular amendment and pass these clauses.



**Mrs Marland:** We are supporting this amendment of the government too, and we certainly look forward to having the government support some of our amendments.

**The Chair:** Shall subsections 18(2) and 18(3) carry? Carried.

Section 18, as amended, agreed to.

Section 13:

**The Chair:** Now the committee will note we are reverting to subsection 13(3), which was stood down until the completion of section 18. I will give members a moment to find it. As we know, there have been no amendments moved. We have two amendments before us, one from the Liberal caucus and one from the Conservative caucus. I ask that Ms Poole place the Liberal amendment.

**Ms Poole:** I obviously have a copy of the Liberal amendment, which is in our binder. On subsection 13(3) the Chair has both a Conservative and a Liberal amendment. Since the substance of 13(3) as proposed by the Conservative caucus is the same as that proposed by the Liberal caucus, and since it is the Conservative amendment, section 14.1, that passed this morning, the Liberal caucus will withdraw our subsection 13(3) so that the Conservatives may move their motion.

**The Chair:** I am just told by legislative counsel that they are not identical amendments. Maybe we could pause for a moment while we straighten this out.

**Ms Poole:** I do not withdraw the Liberal motion.

**The Chair:** Then it had better be placed, because it was never placed.

**Ms Poole:** I was trying to be nice to the Conservatives. Now they tell me they do not want me to withdraw the motion. That is what happens when you try to be nice to Conservatives. It really messes up their lives.

**The Chair:** Ms Poole moves that subsection 13(3) of the bill, as reprinted to show the amendments proposed by the minister, be amended by inserting after "14" in the second line "14.1."

**Ms Poole:** As you are aware, the Liberal caucus had proposed an amendment, section 14.1, to include interest rate changes in the legislation. The Conservative caucus had a very similar motion this morning which passed, while the Liberal one was defeated yesterday.

In view of this, the intention of our subsection 13(3) amendment still stands because it would include interest rate changes in the legislation. In fact we hope that under the circumstances the minister will revisit her decision not to allow tenants the right of interest reductions, relief from that, and that we will have both interest rate increases and interest rate decreases represented in the legislation. Including this subsection 13(3) simply brings it in line with the rest of the legislation we passed this morning. The government of course would want consistency in its legislation, so it of course will be supporting this particular amendment.

**Ms Harrington:** I would certainly like to clarify the situation. I think most people here in the room understand what happened. When this bill goes before committee of the whole House in the Legislature, it is fully the intention

of this government and this ministry to change the section that was in fact passed this morning with regard to interest rate pass-throughs. Therefore, we will not be supporting this amendment, which deals with that section as a technicality.

**Ms Poole:** I am at a loss. I fail to understand, when the NDP government has a majority of members on this committee, why this morning it passed something which some three hours later it is now saying it is going to change in committee of the whole House. Perhaps the parliamentary assistant could clarify for us why the government did not vote this down this morning if it felt it was inappropriate.

**Mr Abel:** We tried. The Chair outnumbered us.

**Ms Harrington:** All the members of the government did vote with the intention of not allowing interest rate increases to go through. Unfortunately circumstances have it this way, but hopefully it will be corrected very soon.

**Ms Poole:** What you are saying is that even though the government has a majority of members on this committee it did not have enough foresight to have sufficient members to pass your resolution.

**Ms Harrington:** Unfortunately, once in a great while, the circumstance will occur.

1510

**Ms Poole:** If the government is not going to support this particular amendment until such time as it may or may not be able to rectify it in committee of the whole House, it will have legislation that is inconsistent. I think it quite irresponsible to put us in that position, and to put the committee in that position where we are passing two sections of the legislation that are inconsistent. I would hope that the government would reconsider the matter and would consider supporting this amendment so that the legislation has consistency.

**Ms Harrington:** That is exactly why I have put on the record that it is fully our intention not to support above-guideline increases for interest rates, so that it is clear to everyone that this is, as you say, an inconsistency.

**Mrs Marland:** I think it is time we looked at what is going on here if what is happening is really the intention of the government. We are going to go through the exercise of three weeks of this committee meeting and, I may add, three weeks at this point, because we sat I would guess maybe seven weeks in November and December, so maybe we are looking at 10 weeks altogether, and we are looking at the expenditure of time, taxpayers' money on staff and the other backup resources that are needed to enable this committee to sit. We are looking at the total cost and investment of taxpayers for a committee process to take place.

We have one opposition amendment this morning, which happened to be ours, the PC amendment, that was passed. Now we are in the afternoon session and here we come with the great big heavy hammer that says: "It doesn't matter what happened this morning. We're going to fix you when we get you in the House, in committee of the whole." That is what the parliamentary assistant just



said. "It does not matter what happened this morning. It is not going to make any difference at all, because it is our intention to fix it in committee of the whole House."

What point is there in our sitting here with our investment in time, as I have already said, at a tremendous cost to the taxpayers, for these hearings to be held, and the whole thing just becomes an absolute farce.

Why do we bother? There is no point. If the government has decided this is the bill it wants to deal with rent controls in this province, why do we not just adjourn the meetings and go ahead and say: "Okay, this is your bill. Take it or leave it." We have gone through a process this morning where we had a democratic vote and we happened to win one and now you are saying: "Don't worry about it. You only won it in committee. We will fix it in the other committee. We will call for that amendment to be reversed back to the position that we, the socialists in this province, want, that we, the socialists in this province, demand. We will fix it in committee of the whole House."

I am sorry. To sit here and be part of this exercise is an absolute exercise in futility and absurdity, let alone the cost to the taxpayers of this province. How can this socialist government sit here and be part of it and admit to us that this is the process? Why bother? If we have a bill that you have already decided—I actually accused the minister of this two months ago, but I had hoped maybe there might be a little window of light where the possibility of our sitting here dealing, section by section, with these amendments might mean, that the government might respond to the concerns of the people out there, tenants and landlords, who do have concerns with this legislation, with the way it is drafted. The very fact that the government brings in over 130 amendments to its own bill proves that it did not think it was well drafted in the first place, so here we are trying to amend it, trying to make this poor piece of legislation something that might work.

We are approving amendments all the time, and now because there was one amendment that was approved that happened to be an opposition amendment, we are saying: "Ha, ha, don't worry. We'll fix you. We'll call this bill into committee of the whole House when the House reconvenes, and we will fix it. That was a mistake. We didn't have enough of our members here. It wasn't intended." If the intention is that we do not pass any of the opposition amendments, then you might as well tell us now. I am absolutely adamant about this. I think the Minister of Housing should come into this committee and say, "There are a couple that we'll accept, but we're not going to accept anything else," and cut out all this nonsense and gamesmanship.

I am sitting here, day after day, making my arguments from the point of view of the people I represent, tenants and landlords, people who have no choice but to live in rental accommodation in this province, whose rights are not protected by this bill, whose future accommodation and opportunity to live in decent rental accommodation will not happen as a result of this bill. To sit here and be part of this is deplorable. I have been in this Legislature for seven years. I have never sat on a committee where the government was so bald-faced about the fact that this was

its agenda and this was the only stuff it would accept, the only amendments it would accept.

It is ironic. The government asked us if it could print its amendments in this bill, and we said, "If it means we can expedite a process, as long as we are going to debate all those amendments, fine." We agreed to it. I think what we should have done was agree to have everybody's amendments printed, so we could make an even better pantomime of this process than it already is. We should all be down at the Pantages Theatre, if this is the kind of performance we are going to be dealing with. If this is really the process that is before us at this tremendous expense to the taxpayers, that is where we should be. We might as well give them some real money's worth.

Here we are, back at section 13. With everything we do with the amendments with the rest of this bill, we are going to be looking at it and we are going to say, "Of course, it won't matter, because you did pass section 14.1 but of course we are going to change that when we get into committee of the whole House, so right now, although it is passed, it is not going to be passed." This is unbelievable.

I demand that the Minister of Housing come to this committee and once and for all tell us if there is any point in our sitting here, or is it this the bill, as printed, that they will accept and that is all? If it is, let's adjourn. If that is the bill and only those amendments that are printed in this bill—I may point to over 100 amendments that I said a few moments ago, the over 100 amendments of the government to its own bill, because the bill was so poorly drafted in the first place—if that is all the Minister of Housing is willing to accept, then she better come in here and tell us.

**Ms Harrington:** Mrs Marland, may I respond to that question? First, we have passed some of the opposition amendments and there are, coming up, some other opposition amendments that we are likely to support.

**Mrs Marland:** Are we saying this dance is even more elaborate than I had thought? Are we saying that of those amendments you have already so graciously passed, you are only selectively going to take some of them into committee of the whole House and reverse them?

1520

**Ms Harrington:** No. I am saying there are further parts to the bill we are going to be looking at, as you know, and there are other amendments in our book here which are opposition amendments we are evaluating, have evaluated, and may be likely to support.

**Mrs Marland:** I think this is real gamesmanship, "We have evaluated. We might likely support."

**The Chair:** Mrs Marland, I think the committee is very interested in what you are saying because it relates to consistency throughout, but what I am most concerned with is that you direct your comments to subsection 13(3) in particular.

**Mrs Marland:** Mr Chairman, I am directing my comments to 13(3), because it is relative to a response by the parliamentary assistant. My response is to what the parliamentary assistant just said in response to the Liberal critic. The parliamentary assistant said, "Oh, yes, but we are



going to change that in committee of the whole." That is the basis of my comments, and if the parliamentary assistant is allowed to say, "We passed it this morning, but we are going to change it," I am certainly allowed to respond to her comment.

**Ms Harrington:** I would like to be open and clear to this committee and to the people of Ontario. That is why I stated it.

**The Chair:** Ms Harrington, Mrs Marland has the floor.

**Mrs Marland:** I am simply saying that when you have had our amendments for over two months, there is no way the ministry does not know which of our amendments it is going to support. Why bother? It is pointless, because even one that we won this morning in a democratic vote you are now going to reverse. It is totally meaningless.

Next Monday we will have the Premier of this province on television telling the people why we are in such a terrible situation because we are so short of money. In the meantime—

**Mr Abel:** On a point of order, Mr Chairman: Perhaps you could ask Mrs Marland to get down off her soapbox and speak on 13(3).

**Mr Ruprecht:** It is quite relevant.

**Mr Abel:** She has not spoken on 13(3) yet.

**The Chair:** Order. Mrs Marland has the floor.

**Mrs Marland:** It always hurts when you tell the truth. The parliamentary assistant is the one who said what the process was going to be, that a motion passed in this committee this morning is going to be reversed. I am simply saying that at a time when we have people in this province out of work, out of funds, out of housing and out of food, we are wasting money sitting here. I suggest that for all of us as members who claim per diems for this committee work, for the staff time of ministry, Hansard, legislative counsel, whoever else is involved in support staff for the operation of this committee, that it is a total waste of money. Why waste the money? Why waste the process? Why waste the time when you have no intention of even being honourable enough to uphold a motion passed this morning by this committee?

I do not understand why this sham has to continue. It has not happened on other committees with other legislation. We are in the middle of the deliberation—when a motion has been upheld in a democratic vote—and we are told: "It does not matter because we are going to change it in committee of the whole. We are going to get you back in the House and we are going to clean it up." If that is what is going to happen, we need to know it now and we might as well stop the process and the waste of money. This is an outrage.

I would like to know, through the parliamentary assistant, when the minister would be able to attend this committee. If she is in the building this afternoon, I would like to know whether she is able to come into this committee for 15 minutes and tell us what her intention is with the process of this bill, now that we know it does not matter what we pass or what we do not pass.

**Ms Harrington:** The minister is not available this afternoon, to my knowledge. She certainly wants to be in this committee and will be in this committee, I believe, every opportunity she can be, and she will be back, I am sure, very soon. But to my knowledge, she is not available this afternoon.

**Mrs Marland:** Do you know, without contacting her office, that she would not be available to come into the committee this afternoon in the next hour and a half?

**Ms Harrington:** That is correct. She is not available.

**Mrs Marland:** You know without calling her on this serious matter that she is not available?

**Ms Harrington:** That is what I just stated, yes.

**The Chair:** You have an answer, Mrs Marland. Can we proceed?

**Mrs Marland:** I think it is a waste of time proceeding. I would like someone on the minister's staff to go and make the phone call to see if she is available to come and resolve this serious matter.

**Mr Abel:** This is getting ridiculous.

**Mrs Marland:** Is that too much to ask?

**The Chair:** Well, it is—

**Mrs Marland:** I am not asking the Chair. There are enough ministry staff around here that I would think somebody could make that phone call and see if she would be able to come in, even though she was not planning to. I may tell you that the Minister of the Environment was able to reschedule a whole evening because of the inclement weather in order to be where she was supposed to be and where she was needed to be, so I would think we should give this Minister of Housing the opportunity to make the decision herself. I am simply asking that she be invited to attend this meeting this afternoon to give us the opportunity to ask her that question, and I would like someone on the staff to confirm whether she would be asked and invited to come this afternoon.

**Ms Harrington:** I think it may be helpful to explain where the minister is, which is not in this building but at the Premier's Council on Health, Wellbeing and Social Justice. If Mrs Marland wants to talk to the minister, she will be available at the next sitting of this committee, I believe.

**Mrs Marland:** If the minister is attending the Premier's Council on those matters, as outlined by the parliamentary assistant, and knowing that the minister has a chauffeur, I do not think it would very difficult for her to excuse herself to attend this meeting this afternoon for a short period of time.

**Ms Harrington:** The minister does not have a chauffeur.

**The Chair:** Can we move on, please?

**Mr Turnbull:** Do you call it a driver?

**The Chair:** We have had a response.

**Ms Harrington:** No, she does not.

**The Chair:** The member believes that response is unsatisfactory, but we have had a response.

**Mr Turnbull:** Chauffeurs and limos became cars and drivers; we know.

**Mr Abel:** She does not have one.

**Mrs Marland:** She does not have a chauffeur. Is that what they said?

**Mr Abel:** Talk about wasting time trying to throw your weight around.

**Mr Mammoliti:** It seems to me that Mrs Marland wants to continue this charade. That is why I think it is perhaps important for me to explain exactly what happened this morning from our point of view. It all comes down to a decision made by the Chair. Ms Poole related 13(3) to 14.1. She suggested that we pass 13(3) because we passed 14.1.

**The Chair:** I am not sure this is particularly relevant to 13(3).

**Mr Mammoliti:** It is not relevant, but Mrs Marland is asking for the minister to be here. She is going to continue this charade, from what I can gather, and I think it is important for us to deal with this and deal with it now so we do not waste any more time.

After Ms Poole recently asked us to consider passing 13(3) because of what happened this morning with 14.1, the parliamentary assistant, Ms Harrington, suggested a mistake was made this morning and it was going to be brought to committee of the whole House. It is going to be decided upon there, as the process calls for, the process she is calling a sham.

This morning, Mr Chair, we had to make a decision. We chose not to call a 20-minute recess because we figured the Chair had to rule status quo. Status quo, we believed at that time, I believed at that time, would be to go back to the section in the act. You chose to make that ruling, the status quo being Mrs Marland's amendment.

1530

**The Chair:** Mr Mammoliti, I think you misunderstand at least slightly. The Chair has the right to vote any way he wishes.

**Mr Mammoliti:** Yes.

**The Chair:** The Chair was ruling according to precedent. The Chair was voting. I made no ruling whatever. I was merely voting.

**Mr Mammoliti:** Okay. Nevertheless, you made your ruling and we have to live by it. There is no question about it.

**The Chair:** I voted. I made no ruling.

**Mr Mammoliti:** You made your ruling. The point I am trying to make, Mr Chair, is that this side of the committee made a decision that was not that great and if somebody wants to blame somebody across there, they can point fingers at me. I am a rookie at this game and we learn by our mistakes. There was a mistake made here this morning on our part. If this could help Mrs Marland in her antics this afternoon, I hope it will.

You heard from our side of the House. We made a wrong decision this morning. We should have called a 20-minute recess. We tried to save time. We thought the

status quo would be that of going back to the act itself. Okay? Now I hope that is done with and finished.

In terms of subsection 13(3), at this point I would like to hear a little more debate on it before I vote, so if Mrs Marland or if anybody else from the opposition would like to talk about subsection 13(3) and debate subsection 13(3), as we should, then I would be prepared to sit here and listen to it. But if she is going to rant and rave and ask for the minister to be called out of meetings, I cannot accept that.

**Mr White:** I would like to make a few points with regard to this process. First, I have been astounded throughout these hearings with the eagerness and willingness of the minister to be present, despite the very capable work of Ms Harrington as the parliamentary assistant.

**The Chair:** Perhaps we could get back to subsection 13(3).

**Mr White:** Mr Chair, certainly we have allowed some latitude in this regard. I believe I deserve the same latitude. The parliamentary assistant has indicated the direction in which we wish to proceed and that certainly allows the opposition members to make their statements in committee of the whole House, just as they are quite capable of opposing bills in committee of the whole House that have been through the committee process.

If Ms Marland suggests we are wasting money through committee debate, through the arduous process of finalizing legislation, perhaps democracy is a wasteful process, but I do not think so. We all invest a great deal in it and I would like, if possible, to return to subsection 13(3) and state that as far as I am concerned, a vote on this particular section can certainly be independent of a vote upon another section, just as the parliamentary assistant has suggested, and we can adjust in committee of the whole House in either direction. For those reasons, I would like to suggest that we as a committee follow the lead suggested by the parliamentary assistant.

**Mr Ruprecht:** The member should understand that Mrs Marland is raising a larger issue here and the issue, I think, is relevant; that is, if we are wasting our time in terms of voting and the parliamentary assistant, who in my view normally has always been very sensible—I listen with great care to every word she says and she is normally reasonable—tells us that the vote you and I have supposedly thought through is going to be overturned later on no matter what we do, no matter what the arguments were, then sitting here becomes almost irrelevant. Consequently, if I understand her point correctly, let the minister appear for a few minutes before this committee and let the minister indicate in which direction she wants to travel. If that is the case, then I think Mrs Marland should be supported and she should be here for a few minutes and tell us what she wants to do specifically, and we can carry on.

I do not know whether Mrs Marland would like to make a motion to that effect, to have the minister appear briefly, or whether she wants to adjourn. Obviously, it is up to her, but I think she should make it and then we should carry on one way or the other. I do not think she should be obstructionist, which I think she is not.



**Mrs Marland:** I wish to move adjournment of the committee until the minister can come and answer the question on the process.

**Mr Owens:** There is a motion already on the floor.

**The Chair:** We will recess for five minutes.

The committee recessed at 1537.

1543

**The Chair:** Mrs Marland has moved the adjournment of the committee.

**Mrs Marland:** There is a condition: until the minister comes.

**The Chair:** There is no condition needed. You just moved adjournment.

**An hon member:** That makes two motions.

**Mr Ruprecht:** Let's be flexible a bit.

**The Chair:** There is no debate on this. You have moved adjournment.

**Mrs Marland:** Then why did we adjourn for five minutes to find out if my motion was in order?

**The Chair:** Those in favour of Mrs Marland's motion to adjourn will raise their right hand.

**Mrs Marland:** I am sorry. That was not my motion. My motion was that the committee adjourn until the minister could come and answer the important question on process. If it was a straight motion for adjournment, why did we have to wait five minutes to find out if it was legal? You can move a motion for adjournment at any time.

**The Chair:** That is what we are doing. Those in favour of Mrs Marland's motion to adjourn?

**Ms Poole:** Mr Chair, on a point of clarification—

**The Chair:** No.

**Mr Abel:** No, that is not debatable.

**Ms Poole:** I am not debating it.

**The Chair:** Those opposed?

**Ms Poole:** I just wanted to—

**The Chair:** It is lost.

Motion negatived.

**The Chair:** We will continue with our discussion of subsection 13(3).

**Mrs Marland:** Mr Chairman, do I have the floor?

**The Chair:** Yes you do.

**Mrs Marland:** May I ask you a question?

**The Chair:** If it relates to subsection 13(3) and what we are presently about.

**Mrs Marland:** I am in order to ask you, as the Chairman, a question on process.

**The Chair:** Yes, if that is what it is about.

**Mrs Marland:** I moved a motion in order that the minister could be in attendance at the committee. I recognize the minister cannot be at every sitting of this committee and I am ready to concede that, although there are ministers who attend all sittings of all committees their bills are going through. But I have conceded that this minister cannot be at all sittings of this committee. My purpose in

moving an adjournment was so we could have the minister here. Mr Chairman, I am asking you where it is in the rules that I cannot move a motion of adjournment with a condition.

**The Chair:** Mr White wishes to speak to this.

**Mr White:** My understanding is that a motion to adjourn is a motion to adjourn. Mrs Marland did not put a motion forth to invite the minister, but rather a motion to adjourn, which was voted upon and defeated. We are now again on subsection 13(3). We have business in front of us. We have an important piece of legislation. I hope we can proceed with it.

**The Chair:** Further discussion of this point?

**Mrs Marland:** No. Did you have a response?

**The Chair:** Yes. What I heard was a motion for adjournment. We voted on the motion for adjournment.

**Mrs Marland:** Hansard will show what I said.

**The Chair:** That could be, but what I heard was a motion for adjournment, and we voted on that.

**Mrs Marland:** Mr Chairman, a motion for adjournment is in order at any time. Could I ask why we adjourned for five minutes to find out if it was in order?

**The Chair:** Mrs Marland, would you continue with your discussion of subsection 13(3), please. Then Ms Poole.

**Mrs Marland:** Go ahead.

**Ms Poole:** Mr Chair, I move that the committee adjourn until such time that the minister joins us to answer this very important question as to whether we are wasting our time, our energy and the taxpayers' dollars in debating this bill when the government has its mind made up.

**The Chair:** Ms Poole, that motion is not in order. There must be intervening business between adjournment motions.

**Ms Poole:** There was. She spoke.

**The Chair:** No, that would not qualify. Mrs Marland, you can continue your discussion of subsection 13(3), please.

**Mrs Marland:** Mr Chairman, when Hansard shows what my motion was, are you going to then—

**The Chair:** I ruled, Mrs Marland. Will you continue with subsection 13(3).

**Mrs Marland:** Can I be clear, then? If we do more of this gamesmanship would you accept a motion of adjournment until the minister can attend?

**Mr Abel:** No, there has been no intervening business.

**Mrs Marland:** After we do some more business. Listen, Don, would you accept a motion for adjournment—

**Mr Owens:** She is out of order, Mr Chair.

**Mrs Marland:** Mr Chairman, I will continue, if that is what you want, between motions.

**The Chair:** Yes, that is what I would appreciate.

**Mrs Marland:** I will go along with that game, but I want to clarify that if I—

**Mr Owens:** There is no deal-making with the Chair if he asks you to continue.

**Mrs Marland:** Mr Owens, would you please wait until I have finished.

**Mr Mammoliti:** On a point of order, Mr Chair: You have ruled. You have asked her to go back to subsection 13(3) and she is refusing. This only proves to me that she is looking to stall and these are tactics consistent with her motives in the past. Please rule.

**The Chair:** I have ruled. I have asked Mrs Marland to continue with subsection 13(3).

1550

**Mrs Marland:** I think too it goes without saying that Mr Mammoliti is imputing motives, but we will not bother with that because he does not seem to be able to understand it.

Can I ask you, on a matter of process, if it would be in order at some time for you to accept a motion of adjournment for the purpose of the minister attending this committee?

**The Chair:** I have told you we cannot accept adjournment motions unless there is intervening business.

**Mrs Marland:** Okay, that is fine. So the fact that what I said was not heard before is nobody's fault at this point. He would accept it in the future.

**Mr Turnbull:** On a point of order, Mr Chair: Perhaps I am missing something here. Is it purely because you did not hear the aspect of waiting for the minister to attend that you ruled on only—

**The Chair:** I ruled, I thought, that Mrs Marland—I understood Mrs Marland to be saying she wished to adjourn. That was it.

**Mr Turnbull:** Can we then get instant Hansard right away to—

**The Chair:** No. I have made a ruling. We will continue with subsection 13(3).

**Mrs Marland:** I am going to relinquish my opportunity to speak to subsection 13(3) until such time as the minister is be present to discuss the important matter of process and whether or not we are sitting here wasting thousands and thousands of dollars of taxpayers' money for a process that is an absolute sham, where there is no intention of the government to change its bill as printed at all.

**The Chair:** Thank you. Further questions or comments on subsection 13(3)?

**Ms Poole:** When you are looking at subsection 13(3), which should be passed in order to give consistency to what this committee passed this morning, section 14.1, you are looking at a much broader question, because if the government is now saying that notwithstanding the fact there have been over 200 amendments to this legislation tabled, it is not going to accept any opposition amendments, regardless of whether this committee has passed them or not, then why are we wasting our time here?

I am wondering why the minister did not take me up on my challenge to her back on the first day this committee sat, when I said to her: "We would like to know what the NDP government's intention is. We don't want to waste hundreds and hundreds of hours of our time

debating over 200 amendments if the government has made up its mind that it is not going to change this legislation in any substantive way." I said to the minister, "Why don't you give us a list of the opposition amendments you are prepared to support and those that you are not, so we can stop wasting our time?"

My constituents expect me to be doing other things than sitting here arguing for six to eight hours at a time on an amendment the government has already pre-determined it is not going to accept. We have probably about 60 or 70 amendments left just from the Liberal caucus that we have not dealt with yet. Some of them are extremely important, about the appeals process and the automatic right for hearing and capital expenditures. We have all sorts of very substantive amendments we want to get to.

But if this government is going to tell us that this is all pro forma, that it does not matter what amendments we have here, that it is not going to be willing to accept them—so far that is definitely the indication we have. I am quite dismayed that now the parliamentary assistant says that notwithstanding the fact this committee passed section 14.1 this morning, it is now not going to pass subsection 13(3), the section we are addressing right now, because it is going to change it back when we get to committee of the whole House. Why should we waste our time debating all these? I have better things to do.

I do not mind having a very honest and forthright debate about these important matters if it means it is going to have an impact on the government. The government has six members on this committee; the opposition has five, plus the Chair, who is an opposition member but does not vote, and it is very clear the government holds sway on this committee.

I have sat on this committee for over a year now. I think some of us deserve medals for doing it, because we are beginning to feel like we are batting our heads against a brick wall. I did not spend hundreds of hours putting together all these amendments for the Liberal caucus and come to committee and spend since October 31 debating them, to find to date that nothing except, I think, one fairly insubstantive amendment, which the government took over as its own amendment—that is all we have got from it, and it is a waste of time.

We would like the minister to come and lay it on the table and tell us what she is prepared to look at and what she is not. Then we can go through the legislation and can look at the parts. If there are technical difficulties we want to draw to the minister's attention, fine, but otherwise, why are we wasting our time?

I cannot believe the NDP government is going to say we should pass a section that makes it inconsistent with another section that we passed this morning. Certainly, if we ask legislative counsel—and maybe I will ask legislative counsel—should we be passing a clause that is inconsistent with another part of the legislation that has already been passed?

**Ms Baldwin:** I think it might be better to address that question when the clerk returns.



**Ms Poole:** Okay. Perhaps we will wait a moment until the clerk returns and then she and the legislative counsel can confer.

**Ms Harrington:** Ms Poole, perhaps you would like me to try to clarify the government's position, because you have made some statements saying that you do not understand the direction.

**Ms Poole:** I think I quite well understand the direction. The direction is that if it is an opposition member's amendment it fails and if it is a government amendment it passes, unless you mess up and do not have enough members here to vote for it.

**Mrs Marland:** It fails even after it is passed.

**Ms Poole:** Even then it fails, because they declare they are going to change it in committee of the whole House, but it makes a mockery of the whole committee process. I have been on a lot of committees in the last four years and on many of them there has been quite a cooperative spirit. In the select committee on education there were four reports that were unanimous by an all-party committee because there was give and take and people were listening, but I am getting the impression that in dealing with these two pieces of legislation, Bill 4 and now Bill 121, the government has made up its mind and we are just wasting our time. If that is the case, I would like to find out.

**Ms Harrington:** I would like to indicate to you that I have stated earlier that there are lots of amendments, as you know, ahead of us. The government has considered them and there are some we are likely to support. I cannot name them all right now. I would say that we even have a PC motion that we just received this past week that we are very interested in and are having our staff look at. Hopefully it will be dealt with Monday or Tuesday. As you know, we have to get this bill through for the reasons we have put forward, but we are open to making it better. Certainly some of the amendments the opposition has come forward with will do that and that is why we are here.

I feel it is my job to make as clear as possible what happened this morning, not only for the opposition members so they will not be under any illusion about what happened this morning, but also for the public out there. I think it is a mark of this government that it is as open as possible and it says, yes, this did happen and says what its intentions are. That is why I did that.

**Mrs Marland:** It is a democratic vote. You are going to reverse a democratic vote.

1600

**Ms Harrington:** I would like to address another point that you and Mrs Marland raised, and that is the time and expense of having staff, Hansard, television, legal counsel, and our ministry people here. It is just the way I was brought up or lived life I guess. I feel that at times the amount of time that is spent it really is a shame. I would like to sympathize with some of the feelings that were brought forward. We have a great responsibility on this committee to work very diligently together because we are talking about taxpayers' time and money.

I recall very vividly that the second Thursday in December we spent the afternoon in this room through until 6 o'clock. I caught the 7 o'clock bus home to Niagara Falls and all the way home I could not think of anything else except the proceedings of that afternoon. What a waste of time and money I felt it was. I really hope things will change. I know it does not happen overnight that people's attitudes change, but with the citizens of this country feeling that politicians do have to change, I think it has to come soon.

**Ms Poole:** In response to the comments of the parliamentary assistant, there have been times when I think many of us on this committee have been very frustrated about the amount of time wasted, about the amount of time spent on certain sections, but I think the parliamentary assistant should also realize that quite a bit of this has been due to utter frustration. We have, as I have mentioned, over 200 amendments to this legislation.

**The Chair:** Can we come back more directly to subsection 13(3)?

**Ms Poole:** I was just about to get to that. As has been evidenced by the parliamentary assistant's response to subsection 13(3) and the desire of the government not to pass it, sometimes this type of thing can be—

**Mr White:** You are presupposing a vote.

**Ms Poole:** I am not presupposing anything. The parliamentary assistant has already said the government members are not going to support subsection 13(3) because they are going to change section 14.1 when it comes to committee of the whole House. It is no presupposition that the government is going to vote against this unless the parliamentary assistant does not speak with the authority of the government, and I think she does.

**Mr Mammoliti:** You are exactly right.

**Ms Poole:** I thank Mr Mammoliti for saying this is true. The problem is you reach a point of frustration because you know that nothing is getting through, that nothing is being done. The government has to realize that if it wants the cooperation of the opposition, there has to be give. We have some very deep concerns that we have to express about certain sections of this legislation. Our constituents and the people of this province expect us to, and that is our job as opposition members.

Subsection 13(3) on the surface looks like a relatively minor amendment. All it does is ensure there is consistency with the rest of the act. Section 14.1 can survive without subsection 13(3) being passed, but it will be inconsistent. But you are not going to stop interest rate changes from being part of this legislation at this particular stage by voting against subsection 13(3).

**Ms Harrington:** I understand that.

**Mr Mammoliti:** So let's get on with subsection 13(3).

**Ms Poole:** So vote in favour of subsection 13(3) and then if at some later date the government, in its wisdom, deems it is unwilling to accept the interest rate changes, then at that stage you can make the necessary changes, but at least keep your legislation consistent as long as it is included in it.



**Ms Harrington:** A good try.

**Ms Poole:** "A good try," the parliamentary assistant says, but no cigar.

**Mr Owens:** Mr Chair, I hope you will allow me the same latitude to discuss subsection 13(3) as you allowed the member for Eglinton.

**The Chair:** I am not sure I allowed it.

**Mr Owens:** Perhaps you may like to go grab a coffee then or something. In terms of the inconsistency argument, I certainly agree with the member for Eglinton that there would be an inconsistency if this section were not passed. Perhaps to take care of that inconsistency the member for Mississauga South would consider reopening section 14.1 so that we could make the sections consistent.

In terms of the way we have addressed subsection 13(3) and many of the other sections over the last three days, I can say this has been an instructive process for me, coming in from a committee that handled a major piece of legislation over the last three months. I am quite surprised by the level of acrimony and the lack of cooperation that exists in this committee. In terms of dealing with subsection 13(3), when the minister does return to this committee, as I am sure she will, I think the message is going to be quite clear, that we need to move on through this piece of legislation, including voting on subsection 13(3) and perhaps taking a look at amendments.

I think it is a little bit presumptuous of the opposition to make comments that we have not supported and never will support amendments to this legislation. I think the parliamentary assistant has quite accurately pointed out that there are still a whole number of amendments to go through. I believe we have approximately 130 sections in this bill that need to be dealt with, so including subsection 13(3), we still have a lot of work to take care of. As I say, it is a bit presumptuous of the opposition to assume that simply because the government holds the majority on this committee, we will not support any of the amendments.

Ms Harrington has clearly indicated that an amendment is coming from the third party that the ministry staff are looking at quite closely. I am sure we will wait with interest to see if there is some way we can work it into the legislation, because we know this is not just a one-party system but a tripartite system. The only way these committees work is when we have cooperation from all parties.

In terms of how I would like to take a look at subsection 13(3), in order to remove that inconsistency should the government decide not to support this amendment, I think the members of the third party should consider reopening section 14.1. We certainly would not want that kind of inconsistency to appear in the legislation. We know it wreaks havoc in the lives of legislative counsel to have to respond to these kinds of inconsistencies, and with lawyers trying to interpret why we have passed two sections that are not consistent with each other.

I simply request, and of course in a rhetorical manner, that the member for Mississauga South consider reopening her amendment on section 14.1 so that subsection 13(3) and section 14.1 would then be in concert with each other.

**Mr Turnbull:** There is no doubt about it. It has already been mentioned both by Mrs Marland and Ms Poole that there is a tremendous waste of taxpayers' money going on here if the government has already decided it is going to ram through its amendments.

**Ms Harrington:** That is not what I said.

**Mr Turnbull:** It is quite obvious, when you say it was a mistake that the democratic process carried an amendment today. You referred to it as a mistake.

**Ms Harrington:** I did not.

**Mr Turnbull:** Yes, you did. Taxpayers should be fully aware that it is costing literally thousands of dollars each day that we go on. There are the salaries, the television crew, the translators and the hydro.

**Mr Mammoliti:** Reopen it.

**Mr Turnbull:** We have another member saying, "Reopen the one we did." If we reopen it then we reopen everything, including the government ones you have forced through so far.

**Interjection:** Don't be ridiculous.

1610

**Mr Turnbull:** It is ridiculous. It is absolutely ridiculous. You think it is ridiculous when we are acting within the democratic process. The sooner the people of Ontario see that socialists do not believe in the democratic process, the better. We need an election because you people are absolutely out of control. You have a huge deficit because of your mismanagement, and now we have a fiscal crisis and you are wasting taxpayers' money.

**Mr Mammoliti:** Point of order, Mr Chair: I do not think the deficit is relevant to subsection 13(3).

**Mr Turnbull:** Wasting taxpayers' money is relevant to this whole conversation.

**The Chair:** I tend to agree that we should at least come back to a more direct discussion of subsection 13(3).

**Mr Turnbull:** Subsection 13(3) is a technical aspect put in to acknowledge the clause that was accepted this morning. To suggest it was somehow a mistake that the democratic process worked makes a sham out of these whole hearings. It is perfectly reasonable that we should require that the minister attend to tell us exactly what she is going to accept, if anything, of the opposition position.

Taxpayers should be absolutely foaming at the mouth over the fact that we are having this absolute waste of time, this circus, while we discuss this. The comments that have been made here today are quite ludicrous. We are told it was a mistake that it passed this morning. It was not a mistake; it was the democratic process, that same democratic process that with 23% of the electorate voted these clowns in as a government.

**Mr Abel:** No, it was 38%.

**Mr Turnbull:** No, it was 38.1% of the people who cast their vote. It was only 23% of the eligible voters who voted for you, less than a quarter of the people, and people are disgusted with you.



**Mr Mammoliti:** What does the past election have to do with subsection 13(3)? Mr Chair, I would say that is out of order.

**Mrs Marland:** At least the election was democratic.

**Ms Poole:** On a point of order, Mr Chair.

**The Chair:** Yes, on the same point of order.

**Ms Poole:** Mr Chair, the question was just asked as a point of order, "What does subsection 13(3) have to do with the election?" If it were not for the election, this government would not be in a position to defeat subsection 13(3).

**The Chair:** I would appreciate it if we could come back most directly to subsection 13(3). Members know the process of going through clause-by-clause. We stood down section 1, which is the proper place for us to place our philosophical arguments around the total bill. At that time, I would entertain wider arguments. I hope at this time we could restrict it as much as possible to subsection 13(3).

**Mr Turnbull:** I will conclude by saying that I am of the opinion that if they do not pass subsection 13(3), there will be an inconsistency, but it does not invalidate what we have passed this morning.

**Ms Harrington:** Mr Chair, may I as a point of order ask the legal counsel again if she could verify whether it is in fact inconsistent?

**Ms Baldwin:** I think we would still have a perfectly well functioning statute if subsection 13(3) were not amended and did not include section 14.1. It would be the case that section 14.1 would be treated differently than the other grounds for an increase above guideline for a landlord, in the sense that it would not be true for section 14.1 that a rent officer would not be allowed to consider a matter under section 14.1 if it is not specifically set out as a ground, but the statute would still be okay.

**Mr Turnbull:** But it would be inconsistent.

**Mrs Marland:** Maybe now that we are into this convoluted mode of dealing with motions and voting, and the democratic process is being thrown out the window by this government, perhaps somebody speaking for the government can explain to me what is going to happen with related clauses, sections and amendments to this bill, as we go through, that will change in committee of the whole House.

If we are going to operate this in an "I did not get you here but I will get you there" mentality, how do they plan to deal with the bill before third reading in committee of the whole House? Do they plan to go through the entire bill in committee of the whole House to make all the necessary cleanup amendments and changes so it focuses only on the position they wanted from the very beginning? If they were to lose other amendments in a legal democratic vote such as they lost this morning, where there is an interrelationship between those sections and other sections further in the bill—perhaps the parliamentary assistant can explain.

**Mr White:** On a point of order, Mr Chair: The parliamentary assistant has been quite clear on subsection 13(3). She has given us some suggestions about this particular

section. I am sure she will be equally clear in regard to other sections, but right now we are dealing with subsection 13(3) which she has been clear about.

**Mrs Marland:** Was that a point of order?

**The Chair:** If Mr White was saying the member should return more directly to subsection 13(3), then it probably was a point of order.

**Mrs Marland:** I am asking the parliamentary assistant, if subsection 13(3) were to pass, and the position of the government is that—obviously this is another Liberal opposition motion and this morning's motion that passed happened to be a Conservative motion. If this motion on subsection 13(3) passes, are we into another box where after we vote in favour of the Liberal motion we get another handout from the government members that it does not matter because they are going to fix it in committee of the whole House? If he could answer that question, then I want to know the answer to the question about where sections relate to other sections, as subsection 13(3) does. Even though Mr White does not understand that, subsection 13(3) does relate to another section in the bill.

**Mr White:** Subsection 13(3) is a clarification.

**Mrs Marland:** I was not asking him. He does not understand.

**Mr White:** Other sections are not relevant.

**The Chair:** You may continue, Mrs Marland.

**Mrs Marland:** I would like to ask the minister what she will do in the process of this piece of legislation through this committee, where 13(3) gives us an example of a relationship with another section that has already been passed.

**Ms Harrington:** I would like to respond. When I first made my statement about this particular amendment, I really am sorry if I gave the impression that it did not matter, or if in any way I gave the impression that this could be done easily or lightly, because obviously that is not the way it should be handled. Your question about related parts of the legislation—it is very lucky that we are at this point dealing with subsection 13(3) because this is the only related piece of the bill. For the rest, as I understand it, there would be no problem dealing with it, so I think your concern that we may be headed into other complications within the bill is not so. It is coincidental that we are going back to 13(3) and we can clarify that it was not the government's intention to have interest rate pass-throughs. We are not supporting 13(3). But you are saying that vote will cause other problems with other amendments or legislation and the answer is no.

**Mrs Marland:** The member for Eglinton asked a question of legislative counsel a few moments ago, when the clerk had to be out of the room, about what happens when this Liberal motion is dealt with. The legislative counsel said she would like to wait until the clerk came back in to answer that question. I wonder if she would like to answer that question.

**Ms Baldwin:** Some time after that question was asked, Mr Turnbull asked essentially the same question

and I answered it. There would not be a problem. The provisions are not inconsistent in that sense.

**Mrs Marland:** Okay.

**The Chair:** Could we deal directly then with 13(3)? Further questions or comments on 13(3), Ms Poole's motion?

Interjections.

**Mr Turnbull:** On a point of order, Mr Chair: I have Mr Mammoliti saying, "Why don't we ask the janitors or somebody like this?" when we are asking legislative counsel, and saying that is a waste of taxpayers' money. Will you please instruct him why we have legislative counsel here?

**The Chair:** That is not a point of order. You are out of order, Mr Turnbull.

**Ms Poole:** So that we can get on with other business, and since there seems to be a strong feeling by the opposition that we would like the minister to address this matter on 13(3), could we have unanimous consent to stand it down till Monday when the minister is here?

**The Chair:** Do we have unanimous consent?

**Mr Abel:** No.

**The Chair:** No, we do not.

**Ms Poole:** Would that be the type of cooperation the government members are talking about, when they say no to what I think is a perfectly reasonable request by the opposition?

**The Chair:** You are to speak just to question 13(3). Further questions or comments?

**Mrs Marland:** I move adjournment of this committee until the minister is able to attend to answer the question on process.

**The Chair:** Under the definition of intervening business, there has been none take place. I cannot entertain that motion.

**Mrs Marland:** Could you give us the definition of intervening business?

**The Chair:** Intervening business would be something we would record in the minutes. Debate does not qualify as something that would be entered into the minutes. It would have to be a vote or something else that would be recorded by the clerk.

**Mrs Marland:** Recorded vote.

**The Chair:** We have had a request for a recorded vote on Ms Poole's motion on 13(3). All those in favour—

**Ms Poole:** Mr Chair, do you not ask the question at this stage whether we are going to have a vote on this particular matter?

**The Chair:** We are. Shall section—

**Ms Poole:** I request a 20-minute adjournment.

**The Chair:** Fine. Ms Poole has requested a 20-minute adjournment. We will vote at 4:45.

The committee recessed at 1623.

1648

**The Chair:** The committee will come to order. All members please take their seats. We are about to take the

vote on Ms Poole's motion to amend subsection 13(3). All those in favour of Ms Poole's motion will raise their hand.

**Mr Ruprecht:** Will you read the motion, please?

**Clerk of the Committee:** Ms Poole has moved that subsection 13(3) of the bill, as reprinted to show the amendments proposed by the minister, be amended by inserting after "14" in the second line "14.1."

The committee divided on Ms Poole's motion, which was negated on the following vote:

**Ayes—4**

Marland, Poole, Ruprecht, Turnbull.

**Nays—6**

Abel, Harrington, Lessard, Mammoliti, Owens, White.

**Mrs Marland:** I move adjournment of this committee until the minister can attend to explain why we should continue this process of wasting taxpayers' money when the government has no intention of doing anything other than what is printed in its bill.

**The Chair:** The motion is in order. Mrs Marland, could you repeat that so the clerk can copy it down so there is no confusion about what the motion is.

**Mrs Marland:** Certainly. I move adjournment of this committee until the minister can attend to answer the question on process and whether it is worth the investment of taxpayers' dollars to continue the committee meetings when the government has no intention of recognizing democratically—does the clerk have some difficulty with that, about the length?

**The Chair:** I think the clerk has fallen a little bit behind.

**Mrs Marland:** Is it the length?

**Mr Ruprecht:** I think you changed your motion from the first one.

**The Chair:** Mrs Marland, you are going to attempt this again?

**Mrs Marland:** Yes, I am going to shorten it to make it easier. The first part would be the same, that I move adjournment of the committee until the Minister of Housing—I guess we have to say, do we?—can attend this hearing, this committee meeting, to answer the questions I raised earlier about process, which are on record with Hansard, dealing with the wasting of thousands of dollars of taxpayers' money.

**The Chair:** We will just wait for one moment while the clerk records the motion. Perhaps the clerk could read it back so that we all understand what the motion is.

**Clerk of the Committee:** Mrs Marland moves that the committee adjourn until the Minister of Housing can attend to answer questions raised earlier on the process dealing with the waste of thousands of dollars of taxpayers' money.

**Mrs Marland:** Raised earlier on the process and the waste—that is right.

**The Chair:** Mrs Marland—



**Mrs Marland:** I am sorry. I think I said that I raised it earlier and it is on record in Hansard, so if there is any question about what it was, it is the questions I was asking as on the record in Hansard.

**The Chair:** Fine. Mrs Marland, would you wish to speak to your motion?

**Mr Abel:** On a point of order, Mr Chair: Is this not a motion to adjourn?

**The Chair:** This is a substantive motion, Mr Abel. Because there are conditions attached, it is not seen as a procedural motion.

**Mr Abel:** So it is debatable. Thank you.

**Mrs Marland:** I think the concerns I elaborated on earlier this afternoon, as I have mentioned, are on record now in Hansard.

I have a very grave concern about what has gone on in this committee today. We had a democratic vote this morning, which the government lost. We learned this afternoon that it does not matter because that vote will be reversed in committee of the whole House in the Legislature, so I believe the whole exercise of these committee meetings taking place is an absolutely indefensible waste of taxpayers' dollars.

It is obvious that the government has its agenda to pass Bill 121 in its present form, which has been printed to include its amendments. They have obviously no interest in the democratic process by allowing a vote to take place and, if they lose it, letting the intent of that vote stand. They simply will reverse it at the next stage.

I am simply suggesting that if this is the minister's intention, she is the person to come to this committee and tell us that, and we might as well forget about this stage totally now and go right to the next stage, which is committee of the whole House, and save everybody's time, money and expenditure.

I think the committee starts at 2 o'clock on Monday. If the minister can come at the beginning of that meeting, we will be able to clarify whether this is just the useless exercise and the meaningless process that today has been and therefore it would be an exercise in futility for us to continue. That is the reason for my motion.

**Mr White:** I think the member opposite raises a number of very substantive points. I would like to take issue with several of them. First, the debate within this committee can occur without the minister's presence. The parliamentary assistant represents her very ably and it is, after all, not the minister who votes on specific items, on specific issues, but the committee members.

All committee members are quite capable of bringing forth their ideas and their thoughts on this issue. To suggest that it is the minister alone who does so, I think demeans the role of all our committee members. As I earlier indicated, this is a bill the minister is very dedicated to seeing passed. She has participated wholeheartedly in these discussions in the past and I am very impressed with that.

The specific issue the member brings up is really a twofold one, one of the whole question of votes and of process. This is after all a parliamentary process whereby,

as the parliamentary assistant points out, the committee has the opportunity to vote on sections, to pass them back to the Legislature and for there then to be opportunity for the bill to be revisited.

If the members' rights to question bills that have been passed in committee were ever prejudiced in committee of the whole House, I think she would be one of the first to stand up to indicate that this was unsupportable. This is part of the parliamentary process. When bills return to committee of the whole House, there is an opportunity for members to debate them at that point and to debate those very clauses they are concerned about.

On the issue of democracy being a wasteful process, I have in my riding a number of people of east European background and I have been very impressed with how excited they are about the capacity for democracy their friends and their families now have in their homes and their homelands and their countries of origin, in such countries as Poland, Ukraine and some of the former Yugoslavian areas. For us to say that the democratic process, the parliamentary process, is a sham, a waste of time, simply because it requires money—these processes are important, significant investments on the part of all of us—I think would be a severe affront to those members in my riding who come from countries where they have never had the democratic process available to them.

Further, the process we have with this bill with some 130 sections, where we have presently just finished subsection 13(3), with a scant 117 to go—

**Ms Poole:** On a point of order, Mr Chair: Mr White has not been on the committee every day so he would perhaps not realize that we are going back to a section that was previously stood down, so we have actually accomplished all of 17.

**The Chair:** Thank you for the information.

**Mr White:** Instead of allowing us 117 sections to go, it allows us 112 sections to go.

I think the idea of adjourning this committee's process when there is so much of this bill, which is a very important bill for the tenants and landlords, for the very economy of this province, when we have 112 or 118 sections left to debate and to examine, I think is an affront to our process, and frankly a waste of the taxpayers' dollars, as we have several weeks set aside for this process. For that very reason, the point of adjourning this debate in the face of the immense task we have in front of us I think is very unfortunate.

**The Chair:** I have one speaker still on the list, but we are at 5 o'clock. I will permit it if it is to be brief. Otherwise, we will adjourn.

**Ms Poole:** It will be quite brief.

Mr White is quite right when he says that you do not always have to measure the cost when you are talking about democracy, but he is straying from the real point of what has been happening here. When you are talking about democracy, you are talking about an attempt to bring all opinions into the forum. You are talking about trying to represent the opinions of many people, not just one

particular group, and you are trying to do a balance. That is what this committee has been trying to do.

The government has remained adamant that it is going to represent the one side only. In fact, I think many tenants are very dismayed by parts of this legislation, so the government is not even doing a good job of representing the one side.

When he talks about democracy and taxpayers' dollars, he is right. We do not always count the cost, but we have to make sure the committee hearings are run efficiently. I think you would get far more cooperation from the opposition if the government would give some signal that all the work we have done in preparation and all the viewpoints we represent across the province held some sway. To date, we have not received any signal in that regard.

Like I said, we feel we are batting our heads against a brick wall. If we seem frustrated and recalcitrant, that is why. Perhaps over the weekend the government members can do some thinking about what they can offer the opposition members in the spirit of cooperation, and perhaps the opposition members can come back next week and discuss with them a more efficient way to get through this legislation and yet fully cover the debate

on all the sections. I too share the frustration with the length of time and sometimes the waste of time this is taking. I hope we all do a lot of reflecting over the weekend and come back to do the taxpayers' business more efficiently, more calmly and in a more non-partisan spirit next week.

Maybe I am asking for a miracle, but I will move we adjourn on that particular note, since we are going to adjourn anyway because it is 5 o'clock.

**The Chair:** We have a motion on the floor. Perhaps we can deal with it.

The committee divided on Mrs Marland's motion, which was negatived on the following vote:

**Ayes—4**

Marland, Poole, Ruprecht, Turnbull.

**Nays—6**

Abel, Harrington, Lessard, Mammoliti, Owen, White.

The committee adjourned at 1704.



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**Vice-Chair / Vice-Président(e):** McClelland, Carman (Brampton North/-Nord L)

Abel, Donald (Wentworth North/-Nord ND)

Bisson, Gilles (Cochrane South/-Sud ND)

Harrington, Margaret H. (Niagara Falls ND)

Mammoliti, George (Yorkview ND)

Marchese, Rosario (Fort York ND)

Marland, Margaret (Mississauga South/-Sud PC)

O'Neill, Yvonne (Ottawa-Rideau L)

Poole, Dianne (Eglinton L)

Turnbull, David (York Mills PC)

Winninger, David (London South/-Sud ND)

**Substitution(s) / Membre(s) remplaçant(s):**

Daigeler, Hans (Nepean L) for Mr McClelland

Morrow, Mark (Wentworth East/-Est ND) for Mr Winninger

Owens, Stephen (Scarborough Centre ND) for Mr Bisson

Ward, Brad (Brantford ND) for Mr Marchese

Ruprecht, Tony (Parkdale L) for Mrs Y. O'Neill

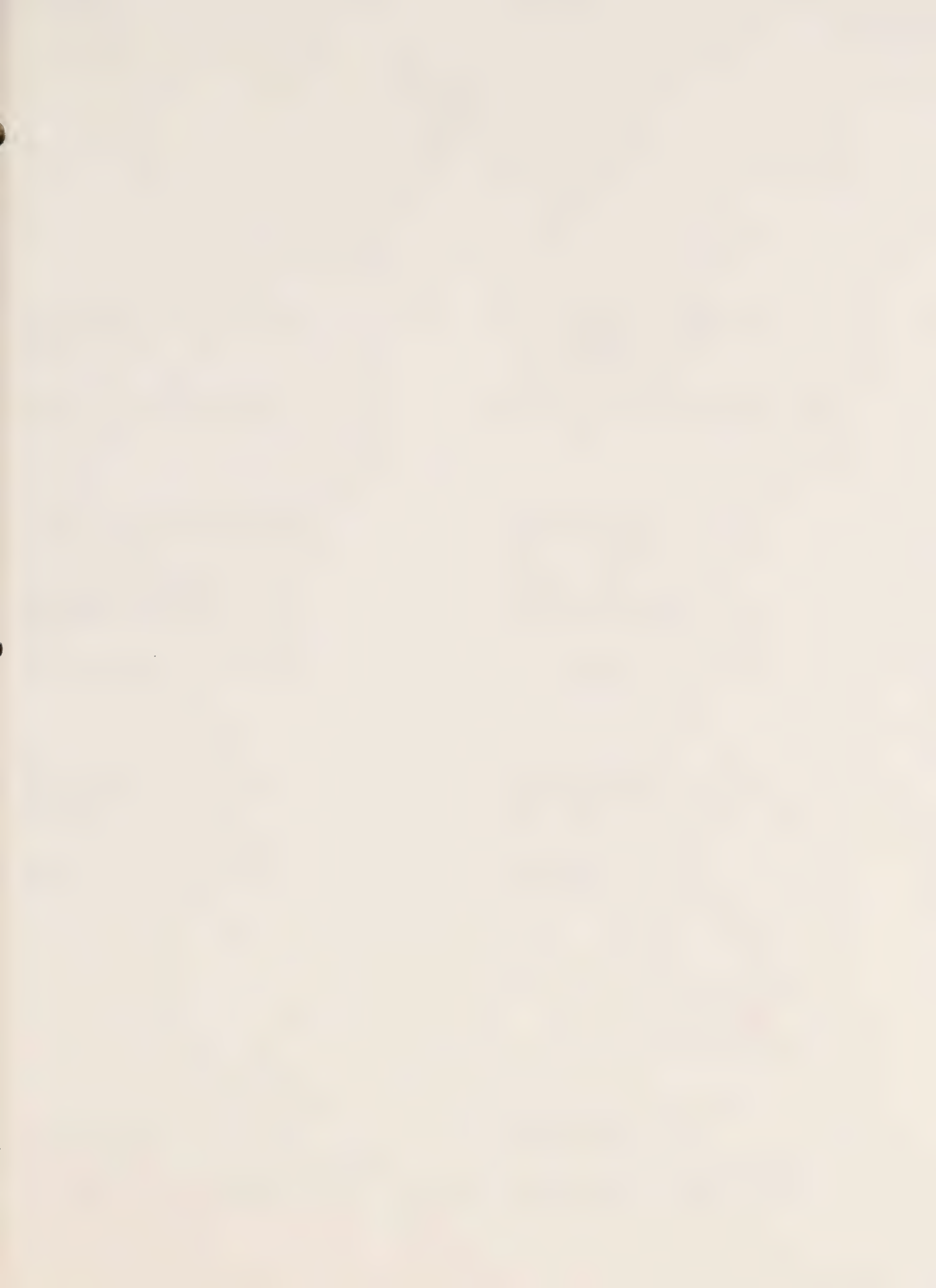
**Also taking part / Autres participants et participantes:** White, Drummond (Durham Centre ND)

**Clerk / Greffier:** Deller, Deborah

**Staff / Personnel:** Baldwin, Elizabeth, Legislative Counsel











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Monday 20 January 1992

## Journal des débats (Hansard)

Le lundi 20 janvier 1992

### Standing committee on general government

Rent Control Act, 1991

### Comité permanent des affaires gouvernementales

Loi de 1991 sur le contrôle  
des loyers



Chair: Michael A. Brown  
Clerk: Deborah Deller

Président : Michael A. Brown  
Greffière : Deborah Deller

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Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au (416) 325-7400.

### Numérotation du Journal des débats

À partir du début de la deuxième session de la 35<sup>e</sup> législature, les pages et les numéros du Journal des débats seront de nouveau numérotés par session. La numérotation du Journal des débats correspondra donc à celle de Feuilleton et Avis et de Procès-verbaux; ainsi que celle des autres publications parlementaires au Canada.

Depuis deux ans, le Journal des débats était numéroté par année civile. Avec ce système, la numérotation des numéros et des pages recommençait au premier numéro de l'année civile, quelle que soit la session ou la législature.

Avec le nouveau système, la numérotation commencée en janvier 1991 s'arrêtera à la dernière séance de la Chambre et des comités de l'actuelle première session. Une nouvelle série commencera le jour de l'ouverture de la deuxième session et des sessions suivantes : numéro 1, page 1. Les rapports des comités seront également numérotés à partir de la première séance de chaque comité pour une session parlementaire donnée.

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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON GENERAL GOVERNMENT

Monday 20 January 1992

The committee met at 1408 in committee room 1.

### RENT CONTROL ACT, 1991

#### LOI DE 1991 SUR LE CONTRÔLE DES LOYERS

Resuming consideration of Bill 121, An Act to revise the Law related to Residential Rent Regulation / Projet de loi 121, Loi révisant les lois relatives à la réglementation des loyers d'habitation.

**The Chair:** The standing committee on general government will come to order. The business of the committee is to conduct clause-by-clause review of Bill 121. At the completion of our efforts on Thursday we were about to have a Conservative motion placed on subsection 13(3). I am told by the clerk that the Conservatives are not going to place that motion because it is somewhat similar to the Liberal motion and that we are dealing then directly with subsection 13(3). Questions, comments or further amendments to subsection 13(3)? If not, shall subsection 13(3) carry? Carried.

Section 13, as amended, agreed to.

**The Chair:** If members will remember, there was a motion put by Mrs Marland that was not deemed to be in the correct spot in the legislation. Legal counsel has now renumbered that as section 18.1. I understand it is presently being typed so it can be circulated to members. With the committee's consent, we will return to that section following the completion of section 19. Is that agreeable?

**Ms Poole:** Mr Chair, just on a point of clarification: Are we referring to the PC motion that was originally numbered section 17.1?

**Ms Baldwin:** I am talking about the motion that was probably numbered something like 18(1)(b). It was dealing with equalization.

**Ms Poole:** The Liberal caucus also had an amendment on equalization that I think legislative counsel had advised us to put in a different section. I wonder if we could consider moving it to the same spot as well.

**The Chair:** Perhaps we should wait for legal counsel to give us some advice on that.

While legal counsel is having a look at that, Mr Owens raised with the Chair a point on Thursday and I will speak to that. On Thursday 16 January 1992, the member for Scarborough Centre raised a point of order with respect to statements made by the member for Mississauga South. As I stated at the time, I did not hear the remarks in question. However, I have now had an opportunity to review Hansard and wish to make the following comments. There are no specific rules that set out what is or is not parliamentary language. Much depends on the tone and context of what is said and whether such remarks are directed at an individual member or said in a general way.

In addition, consideration must be given to the degree of provocation of such remarks and whether or not they

are the cause of disorder. The responsibility of the Chair is to consider each remark in light of these criteria. In this instance I find that the remarks made by the member for Mississauga South were not directed at any one member of this committee. It does seem to me, however, that such remarks are in fact provocative and it may be argued that they could be the cause of disorder. I want to remind the member for Mississauga South, and in fact all members of the committee, that the characteristics of good parliamentary language include moderation and mutual respect.

In the future I would ask all honourable members of this committee to conduct themselves according to the wise counsel found in Beauchesne's Parliamentary Rules and Forms, 6th edition, which says "Language used in this House should be temperate and worthy of the place in which it is spoken."

We are still trying to determine where we are. Perhaps in the interim we could go to section 19 while we are trying to decide exactly where these amendments should go.

Section 19:

**Ms Harrington:** Section 19 refers to the rent which a landlord may charge and collect when there is a pending application for an above-guideline increase as set out in section 19. Until such time as the rent control order is issued, the landlord may charge and collect an amount up to the lesser of the amount specified in the notice of rent increase to the tenant and the amount that would be charged if the maximum rent, excluding all capital components, were increased by the guideline.

You will note a technical amendment has been made to section 19 to clarify the portion of the maximum rent for which guideline increases apply. This amendment relates to the costs-no-longer-borne provision.

**Mrs Marland:** We are in favour of this section.

**The Chair:** Shall section 19 carry? Carried.

**Ms Harrington:** Mr Chair, I was just looking at section 19. We have a government amendment to change the "may" to "shall."

**The Chair:** I do not have a copy of that, or if I do, it is new. Are members aware of an amendment to section 19? Perhaps if we can have unanimous consent, we can revert to doing 19 and having the government place this amendment.

Ms Harrington moves that section 19 of the bill, as reprinted to show the amendments proposed by the minister, be amended by striking out "the landlord may charge and collect a rent up to" in the fifth and sixth lines and substituting "the landlord shall not charge or collect a rent that exceeds."

**Ms Harrington:** In effect, this is changing the word "may" to "shall."

**The Chair:** Questions or comments on the government amendment to section 19?

**Ms Poole:** I believe the government has moved to put in this section 19 to clarify a problem that cropped up under the Residential Rent Regulation Act. The problem we encountered was that a landlord would give tenants a copy of an application stating that he was asking for a rent increase of, say, 8%. The tenants would then not know whether they were legally bound to pay this 8% before the landlord's application had been heard or whether they only had to pay the guideline amount. Many of them would phone MPPs' offices and ask what they had to pay.

Our advice to them was always: "You are legally bound to pay only the guideline amount. If you wish to pay the other amount to the landlord, you may do so, but you are not obligated under law to do so." We always also advised tenants that they should put the remaining balance into a savings account so that if the landlord's application was successful, they would have the money available. But it led a great deal of confusion, because tenants really did not know if they only had to pay the guideline or if they had to pay the whole amount the landlord was asking for.

What this amendment and the other amendment put forward by the government really do is clarify that it would be the guideline amount, unless the landlord is asking for less than the guideline amount, if I am not mistaken.

**Ms Harrington:** That is correct, yes.

**Ms Poole:** The Liberal caucus will be supporting this particular amendment, because I think it will make it very clear what tenants are obliged to pay and what landlords are able to collect until such time as the application has been dealt with.

**Mr Jackson:** The provisions in this bill still exist that arrears—I am going to relate this back to this clause—that the funds not collected after there has been an order—in other words, the tenant only pays the guideline and then there is the gap, then they leave a year later, so they do not retroactively pay. They skip out; they are gone. They are liable for that, but the landlord never goes out and gets it. What happens to that money? That is technical. Is the landlord then able to write that off as an expense, as an operating loss? I want to make a point here, because this is the third time this has come up in each of the three acts.

**Ms Harrington:** I will ask my staff to comment on that particular case.

**Ms Parrish:** I just want to clarify one thing you said. I suspect you did not mean it. In this case, you said that after the landlord got the order, the individual did not pay. If the landlord has got an order for an above-guideline increase, they can get the money right away. This is only where they have applied; there has been no order. I just wanted to clarify that, because I suspect that is what you meant.

**Mr Jackson:** That is what I meant. You are right.

**Ms Parrish:** It would be like any other bad debt. The tenant did not pay for whatever reason. The tenant might also not have paid simply—there might have been all kinds of orders, and the tenant did not pay.

**Mr Jackson:** No. I understand functionally what happens.

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**Ms Parrish:** Yes, it is a bad debt, and it is treated as a bad debt.

**Mr Jackson:** Therefore, it is a loss of revenue, and therefore it is grounds for a subsequent increase showing the operating losses.

**Ms Parrish:** No, because operating losses are constrained to certain grounds for operating losses.

**Mr Jackson:** So that is still constrained to that extent.

**Ms Parrish:** They may be able to deduct it against their income tax. That is a different issue.

**Mr Jackson:** Not on a limited company.

**Ms Parrish:** In terms of what they can apply for in rent increases, there are only four categories of above-guideline increases related to operating, and that is essentially taxes and the three utilities.

**Mr Jackson:** An unincorporated building, for example, where the sole source of income is six units and you have a retired woman upstairs and it is her building, she would write that off as loss of income, but a corporation would have to treat it differently.

**Ms Parrish:** The income tax rules in relation to rental income are quite complex. The only real advantage to being a person as opposed to a corporation is that there is always the possibility that the income tax people will allow you to deduct your losses on the building against your earned income. They will only do that within certain parameters and under certain circumstances. That is the one area of advantage for a private person. In your scenario, this individual's sole source of income is a rental building.

**Mr Jackson:** Can I ask a final question? It is the difference between "may" and "shall." Under the "may" provision, it was possible for a landlord to say, "I'm going to be applying for nine, but if you accept seven we'll waive the fees or we'll waive any charges up to a certain point." When you move to "shall," you virtually eliminate any opportunity for the tenant and the landlord to make any kind of an arrangement which is mutually agreed to. Is that your legal interpretation? I am not talking about the threshold. The difference between "may" and "shall" is it shall be collected, but not greater than a sum. Under "may," they may collect it, but not greater than a sum.

**Ms Parrish:** You are correct about the effect of the act, but it is actually not this section that does it. The act says very clearly that landlords and tenants cannot agree to overcome the statute. The statute says you must apply for a rent increase and you must justify it. You are right about the effect of the act. It is actually not this section that does it; it is another section. Landlords and tenants cannot just simply agree to increase rents above the guideline. They must go through a process of applying and justifying it and, for example, demonstrating that the tenant has actually agreed and they were not coerced or whatever.

**Mr Jackson:** The fact that a landlord might give a tenant grace on that amount would be eliminated by this section, because they shall collect it.



**Ms Parrish:** No. The landlords can always agree not to collect the money if they do not want to. It simply says there is another section in the act which says they cannot agree to overcome the statute.

**The Chair:** Further questions or comments on the government amendment to section 19? Shall Ms Harrington's amendment to section 19 carry?

Motion agreed to.

Section 19, as amended, agreed to.

**The Chair:** I might remind members that although the Chair tries to be as helpful as possible, we do have a large number of amendments to this act from all three parties and occasionally, because of that, we get a little bit confused here. We look for all the help we can. If your party has an amendment, we appreciate being told so that an inadvertent mistake is not made.

Section 20:

**Ms Harrington:** The government does have an amendment to this section as well. Would you like me to place that before I make my remarks about subsection 20(1)?

**The Chair:** Yes. So we can be clear, is this an amendment to what is printed?

**Ms Harrington:** Yes. I move that clause 20(1)(c) of the bill, as reprinted to show the amendments proposed by the minister, be struck out and the following substituted.

**Mrs Marland:** Margaret, my copy of the government motion says 20(1), not subclause (c). Is the one you are reading the new package we got last week?

**Ms Harrington:** Yes.

**Mrs Marland:** It is not the one that is in the binding?

**The Chair:** Let's take a moment to make sure we are all talking about the same thing.

**Mrs Marland:** It is not this one, is it?

**The Chair:** This is it.

Interjections.

**The Chair:** Ms Poole, the long one is the one that is printed, I believe, in the bill. There is a shorter government motion that relates to clause 20(1)(c).

**Ms Harrington:** The Liberals have an amendment to 20(1)(b).

**Ms Poole:** On a point of clarification, Mr Chair: We have the government motion 20(1), which has been reprinted in this act, then we have a Liberal amendment 20(1)(b.1), then we have a government motion, clause 20(1)(c), then a Conservative one under that same clause. Are we dealing with 20(1)(c) before 20(1)?

**The Chair:** I did not note the Liberal amendment. We should deal with the Liberal amendment first because it relates to clause (b) rather than clause (c).

**Ms Harrington:** Maybe you would like me to explain the original section.

**The Chair:** Okay, we are going to have an explanation of the original section.

**Ms Harrington:** Subsection 20(1) specifies the findings that a rent officer shall make before making an order on an application for an above-guideline increase. Prescribed

rules and prescribed periods for making these determinations will be set out in the regulations. The findings are with respect to the guideline amount for each rental unit, the amount of the increase, if any, for each of the grounds that the landlord bases an application on, the amount of the decrease, if any, for extraordinary operating costs, inadequate maintenance and reduced services if these matters are considered by the rent officer, any capital expenditure carry-forward amounts, the maximum rent for each rental unit and the date the maximum rent takes effect, the amount of the capital component for each capital expenditure and the date the component will be reduced.

This is a government amendment to reflect a policy change that the part of the capital expenditure allowance that exceeds the guideline increase will be set out as a capital component and will be later removed from the maximum rent. As well, there are some technical and drafting amendments made to clarify the intention of this section.

**Mrs Marland:** Could you just repeat the very last sentence?

**Ms Harrington:** The last sentence says, "As well, there are some technical and drafting amendments made to clarify the intention of this section." You may want to know the one before that, which says, "This is a government amendment to reflect a policy change that the part of the capital expenditure allowance that exceeds the guideline increase will be set out as a capital component and will be later removed from the maximum rent," which is the costs-no-longer-borne consideration.

**The Chair:** If I might make a suggestion, I think we should deal with 20(1)(a) and go through (b), (c), in order because of the way the amendments are. I will ask at this point if there are questions and comments on clause 20(1)(a).

**Mrs Marland:** This is the most complicated procedure. I think we all agree on that. When you have a bill with 140 sections and over 220 amendments it is no wonder we are all having such difficulty. To be sure that I know that I am voting on clause 20(1)(a), does it read, "to determine what guideline is to be applied to the rental unit"?

**The Chair:** That is correct, Mrs Marland.

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**Ms Poole:** Although my reason for amendment does not exactly match what the parliamentary assistant was reading, I think the text is basically the same, and that deals with the fact that part of the capital expenditure allowance which exceeds the guideline increase will be set out as a capital component and will later be removed from the maximum rent. That particular section, it has been lately brought to my attention, may cause us a lot of grave problems later on, particularly increasing the amount of bureaucracy, the amount of tenant confusion and the amount of complexity when filling out the forms.

I did not realize this myself until I had a submission last week from the Eastern Ontario Landlord Organization, and they may well have sent it to all other members. I was not sure, so I asked the clerk to distribute it. I am bringing up this issue of the capital component here because it relates to all of subsection 20(1), which is referring to the capital



component and the fact that it will be separated out on the form. At such time that the capital component is paid off with the costs no longer borne, it is removed from the maximum rent.

If you look at the submission by the Eastern Ontario Landlord Organization, they have given us two appendices. Appendix A, and I believe everybody has this now, points out how this section would be dealt with if the capital component was not separated out. It is fairly simple as you can see. But then on page 2 they go into what happened under this section. What they are saying is that for a very modest amount of increase per month we are creating a huge bureaucracy and a great deal of complexity because every single capital component will have to be set out and the guideline amount will not be given to this capital component.

We are only talking about a fairly minimal amount. We are not talking about paying off the furnace, for instance. We are not talking about that amount. We are talking about that proportion that was allowed for the capital component, that was allowed for the furnace—that the increase not be added to the guideline amount. I know this is probably making no sense to you because it is not making a whole lot of sense to me, but it made a lot of sense when I read it from the Eastern Ontario Landlord Organization. I think what they are concerned about is the complexity this is going to create, all to save tenants maybe 90 cents a month on their rent by not having the guideline and the capital component separated out.

One thing we certainly do not want is to create more complexity and more confusion on the forms. Perhaps we could ask the parliamentary assistant or her assistant, whoever would like to give us some advice in this regard, whether the fact that the capital component is going to be separated out is going to create a complexity in the forms in that tenants will not really understand what is happening with this particular issue?

**Ms Harrington:** Thank you for that question. Certainly the landlords seem to have made it quite clear here. As you know, we went through a lot last summer dealing with the issue of costs no longer borne and the complexity that would be involved. With regard to your question about the actual forms, Colleen, could you comment?

**Ms Parrish:** You can design forms which communicate more clearly what the story is, and as you know, we tried to do some form improvement over the last year. Some of them have been successful and some have not, but we have made some significant improvements.

It is true that in those cases where the landlord has made a capital application, and not all of them have, the tenant is going to get essentially a message that says: "Your base rent last year was \$600. That's going to go up 6%." So far, that is pretty straightforward. Then, "You pay \$20 for parking," which is another fairly straightforward message, and, "You have to pay \$6 extra a month for capital repair which was justified by your landlord."

I cannot do the mathematics quickly enough, but let's say the tenant is now in the situation where the rent is \$630 a month. The tenant is going to get a message that says: "Your rent is \$630 a month. It will go up another 5%"—

let's say that is the guideline in 1994—"and it's \$25 for parking, and it's that same \$10 that you paid before." Essentially the tenants get told one thing that they would not have been told before; there is one additional piece of information which they did not get before.

The way the act is drafted and the way the forms will be drafted is there will only be one piece of capital-component information. Say the landlord got an extra \$6 in 1993, and in 1994 he gets another \$4. All he has to do is say, "Plus \$10." He does not have to say, "Plus \$6, plus \$4, plus \$2.80." You just add it all up. It is like the parking charge. Landlords have been able to communicate the parking charge quite clearly. They say it is \$600 for the base rent, \$20 for parking, and then they get another thing: \$10. Within that \$10 may be the \$6 from 1993 and the \$4 from 1994, but they only give one number in order to avoid that complexity.

**Ms Poole:** That has helped clarify it considerably. I have another question. For instance, if you had a new furnace put in, and you also had balcony restoration, and they had different amortization periods—say the furnace was 15 years and the balcony restoration was 20 years or whatever—in that case would you have to separate out the different capital components on the form, or is it always boiled down by the ministry to one number?

That was the concern I had. If you have six or eight different items and they all have different amortization periods, and you are going through all of these capital components on the list and saying to tenants, "This is your base rent, this is your parking, and here's the list of all the capital components," it seems to me that they would get extremely confused and wonder what was happening and would not understand exactly what this was all about.

**Ms Harrington:** They would see the capital amount they are paying. What they would also, I hope, realize is that the percentage increase each year is not based not on the capital, as Colleen has clarified, I think, quite well.

**Ms Poole:** But it would only be one number?

**Ms Harrington:** For the capital? Yes.

**Ms Poole:** Okay. That was one of the concerns I had.

**Ms Harrington:** It is added on separately, as is the parking. Then the percentage increase each year would be only on the base rent.

**Ms Poole:** Just one last comment on that particular one. The letter from the Eastern Ontario Landlord Organization expressed concern. They say: "There is to be a capital component for each capital item. Therefore each rent will be shown together with an amount for each item and the date that that capital component is to be removed from the rent." Is that accurate? If you are going to show for each item the date it would be removed from the rent, it would seem to me you would have to itemize each capital component separately, and that is when it might get extremely convoluted.

**Ms Harrington:** Do we have each date and each item?

**Ms Poole:** You have a copy of this, don't you?

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**Ms Parrish:** I do, but I have not had a chance to read it. This issue is actually dealt with in clause 20(1)(g). You may notice clause 20(1)(g) talks about this total capital



component for the maximum rent. What would happen is, on the form it would say—let's take the example of the new furnace and the balcony which are occurring in different amortization periods. We will say it is \$4 for the furnace and \$6 for the balcony so that for years you simply get \$700, plus 5%, plus your parking charges if there is a separate charge for parking, plus \$10.

Time passes and the furnace is paid off, so you want to take off \$4. Later on in the act you will see that the registrar is directed to send a notice to the tenants and to the landlords that simply says: "This is a reminder that your amortization period of 15 years has expired. Subtract \$4." The next year the landlord would simply show \$6. For years the capital component would say \$10 and at the end of the amortization period it would say \$6 because you had taken out \$4. But the landlords do not have to give that number to the tenants; they simply give the total.

**Ms Poole:** And the date these are to be removed will not appear on the notices or the order. Is that correct?

**Ms Parrish:** It will occur on the order. It definitely occurs on the order because the order is the basis for removing the rent, but the notice to the tenant is a different issue. The rent officer must tell you the capital component for each unit when they issue an order: "Unit 1 furnace: this amount"—they tell you the total. "You have a previously approved balcony; add \$4 and \$6 for \$10, and the amortization date at which this expires is 1 January, 2010." So in the order that material exists, they will simply give the wrapped-up number and the registrar will run a bring-forward system to take it out and tell the landlords and tenants to remove \$4.

**Ms Poole:** The notice of rent increase would have just one number.

**Ms Parrish:** That is correct.

**Ms Poole:** And the order then would be quite specific and would itemize all the capital components for each unit and the date of each individual one.

**Ms Parrish:** Yes.

**Ms Poole:** So the order would tend to be more complex?

**Ms Parrish:** Yes, the order will have more complex material in it. The notice is designed to tell the tenants the bottom line from their viewpoint. Given the long amortization periods, it was felt that it would be more sensible to have this BF system run by the registrar who has to then give notice to the landlords and tenants to take out \$4.

**The Chair:** Further questions or comments on clause 20(1)(a)? Shall clause 20(1)(a) carry? Carried. Shall clause 20(1)(b) carry? The Liberal amendment if I am correct, Ms Poole, comes after 20(1)(b). Right?

**Ms Poole:** Actually, Mr Chairman, the Liberal motion 20(1)(b.1) was contingent on our being able to create a separate account for the capital reserve fund. Since the government has denied tenants the right to have capital reserve funds for new buildings and our motion thereby failed, we will withdraw 20(1)(b.1).

**The Chair:** We will deal then with clause 20(1)(b). Questions, comments or amendments? Shall clause 20(1)(b) carry? Carried.

**Ms Harrington** moves that clause 20(1)(c) of the bill, as reprinted to show the amendments proposed by the minister, be struck out and the following substituted:

"(c) for each matter the rent officer considers under subsection 13(7), to determine whether a decrease of the increase justified under clause (b) is justified or a reduction of the maximum rent is justified and in what amount."

**Ms Harrington:** I would like to explain that briefly. This is a technical amendment to reflect the change in subsection 13(7) that on an application for an above-guideline increase for capital, a rent officer must first consider whether there are cost decreases due to inadequate maintenance, discontinued services or extraordinary operating costs.

**The Chair:** Questions, comments or amendments to government motion, clause 20(1)(c)? Mrs Marland.

**Mrs Marland:** I hope I am not going to be the person who is going to have to interpret, when this bill is proclaimed, the wording of clause 20(1)(c) the way it is being presented in this motion. Is there not a simpler way to put this?

Do you know what is going to happen with this bill? We are going to make a lot of lawyers in this province very wealthy, because nobody is going to be able to interpret it. It is a serious comment when you know that we have 150,000 landlords in this province and apparently, according to information I have been given, about 11,000 of 150,000 landlords own buildings of more than seven units. So we are looking at 139,000 little landlords in this province, people who have invested in buildings up to seven units, the little two-storey walk-up with six units in it perhaps. We are bringing in this great, big sledgehammer piece of legislation with a clause that reads, "for each matter the rent officer considers under subsection 13(7), to determine whether a decrease of the increase justified under clause (b) is justified or a reduction of the maximum rent is justified and in what amount." Who in heaven's name is going to be able to interpret this stuff? Seriously.

It is appalling that any government at any level passes legislation with sections that are totally unreadable, which I think this section is. There are other sections that read as badly as that too. Is it really fair that some little landlord somewhere is going to have somebody come to him and say, "Under clause 20(1)(c) I can do this and you can't do that?" He is going to have to pay a very big fee to get somebody to tell him whether he can or cannot under a section that is worded like this, and woe betide the poor tenant who is trying to interpret it as well.

Is there no simpler way to put this? Are we now writing legislation only for lawyers and those people who can interpret legalese? I am very serious about this. I do not think it is fair to write legislation that can only be interpreted by people who understand legalese.

1450

**Ms Harrington:** That is certainly a good point. I am sure this government or any government would want to make legislation as simple and readable as possible. I am sure, if you look back in the history of the legislation that has been passed here or anywhere, you will know, as our legislative



counsel would tell us, that many of these things have to be written in a certain manner that, as you say, is legalese.

I am not sure if Colleen would like to comment on how this will actually affect the landlord—

**Mrs Marland:** —or the tenant.

**Ms Harrington:** I stand to be corrected, but this section is laying out the procedure, the order in which the rent officer will look at things when making an order. It is a sort of summary. That is why it seems very complex, because it is going through everything that the rent officer will have to consider. This is one step of the process.

**Mrs Marland:** And you know why that makes it even more interesting? It is because in spite of the fact, as you know, that I have been asking now for three months what the job description is for a rent officer and what his or her qualifications have to be for the job, we still do not know what kind of qualifications the rent officer has to have to be eligible for that position.

With this clause I am sure rent officers will have to be lawyers, especially with that answer from the parliamentary assistant. She said this lays out for rent officers how they are to make a determination. I would say, "Good luck." We are going to expect these rent officers to be some kind of wizards.

**Ms Harrington:** I do not think that is a true comment.

**Mrs Marland:** No, of course you do not.

**Ms Harrington:** But I would ask Colleen if she would like to clarify how the landlords will deal with this particular decrease situation.

**Mrs Marland:** Then we can send them out the Hansard. That will be helpful.

**Mr Jackson:** On a point of clarification, Mr Chair: I thought the question was whether the rent review officer is in a position to interpret that, not the landlord. It implies there is going to be a decrease. I thought that was Mrs Marland's point.

**Ms Harrington:** I understood Mrs Marland to be asking about how landlords would be able to read this and the interaction with lawyers in such cases. I am the one who actually mentioned rent officers, unfortunately.

**Mr Jackson:** That is the area I want to get into when it comes to my rotation.

**The Chair:** Thank you. Mrs Marland has the floor.

**Mrs Marland:** Ms Parrish was going to answer.

**Ms Parrish:** Speaking entirely in my capacity as a policy person and not of course as a lawyer, this subsection 20(1) essentially goes through a process of saying: "First of all, what is the guideline? Is it the 1992 guideline? Okay, then it is plus 6." Then, "What have you asked for, landlord?" "We have asked for more money for a new roof, for the high heating bill as a result of the weather for the last week." "Under clause 20(1)(c), the tenants in response have said you should actually get less."

In clauses 20(1)(a) and (b) essentially the landlord says, "I want this guideline increased, plus I want more, and these are my reasons." Clause 20(1)(c) says the tenants are responding by saying: "Yes, but the landlord has withdrawn

this service. They used to give us parking, they do not any more or there is inadequate maintenance, or there has been an actual decrease in taxes, for example, which should be offset against the amount that the landlord has asked for."

The reason this section has been redrafted from what is in the printed version is, as you may recall, that before Christmas we amended subsection 13(7) in response to a concern I believe the Liberal Party brought forward that subsection 13(7) was very oddly drafted. It had all these references to sections 24 and 26, and nobody really could figure out what it was all about. So essentially what happened was subsection 13(7) was redrafted and now we have to redraft clause 20(1)(c) so that it refers to the same thing.

Clauses 20(1)(a) and 20(1)(b) simply say this is what the landlords want to do, and this is how much they want to increase the rent. Paragraph 20(1)(c) allows tenants to say why landlords should not get as much as they asked for, and essentially does the offset. What the section is trying to do is say, "Let's bring all of those transactions together, let's add on what the landlord is justified in getting, let's subtract what the tenants are right about saying, and then we'll get a number at the end." That will avoid having to have 17 different cases going on at once. Everything will come to the same table. "We'll add all this, we'll subtract all this."

**Mrs Marland:** Why do we not use simple words? Instead of saying, "to determine whether a decrease of the increase justified under clause (b)," why do we not just say, "to determine whether the increase is justified under clause (b), with all the other pertinent considerations that come under other sections of the bill"? I guess it is just too simple to say, "to determine whether the increase is justified." "To determine whether a decrease of the increase" is the worst example of gobbledegook. You are determining what the increase will be and you are considering all the elements that are available to both sides of the argument under this legislation. So why do we not just determine what the increase is? We are using two words.

**Ms Harrington:** Maybe I could ask legislative counsel if she feels that is clear in legal terms. Could I ask?

**Mrs Marland:** Probably, yes.

**Ms Baldwin:** In legal terms, I think clause 20(1)(c) is clear. I would never argue with a member who says that something is difficult to understand.

In response to what Mrs Marland has said, I would say there are a couple of issues. You mentioned the issue of legalese. When we try to draft things simply, there are a number of issues we have to face. One of them is to try to avoid words that people would not understand and that are, generally speaking, known as legalese. There is certainly an attempt to do that in this legislation. I think most of the words used in that provision are reasonably clear for readers who are not lawyers to understand.

We sometimes get into difficulty trying to put something in as plain language as one might desire when there is a conflict between the need to state things that are technically difficult and the desire for simplicity. This particular provision is drafted in such a way, for various reasons that I need not go into right now, to make it clear that when you



are looking at the possibility of reduction, you are either reducing the increase or you are reducing the maximum rent.

It is a question of judgement as to whether or not it is necessary to go into that much detail. There is no question that detail makes things harder to read. Lack of detail has the risk that things will be interpreted wrongly. It is a judgement call. I do not think it would be appropriate for me to make that judgement. I think that is a judgement it is more appropriate for the ministry or the committee to make.

**Mrs Marland:** I think I have made my point. I do not know how you decrease something that has not even been increased yet. I am just going to let it go. I respect the comments of the legislative counsel and I recognize that the wording has been made as simple as it can be, but in this particular sentence—

**Ms Harrington:** It is awkward.

**Mrs Marland:** It is terribly awkward: “a decrease of the increase justified.” You just do not give that percentage of increase if it does not qualify, so you are decreasing something that has not happened essentially, the way it is written. Anyway, onward and upward.

**The Chair:** Thank you, Mrs Marland. Your colleague Mr Jackson has some comments or questions.

**Mr Jackson:** Questions. Is it our understanding that this is in the process of reaching a final order, or is this the process by which the landlord makes application for an increase above the guideline? What stage are we at? I do not have my act in front of me. Just tell me which one it is.

**Ms Harrington:** It is my understanding that this is the order in which the rent officer determines what the final order will be. Is that correct?

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**Ms Parrish:** Yes.

**Ms Harrington:** The landlord has already made his application. Now the rent officer is making an order.

**Mr Jackson:** All right. If that is the case, what are the regulations that speak to this section? I have experience with this section, having done a couple of appeals on behalf of tenants, and I have been appalled at the effort of the reviewing officers in terms of pursuing the documentation. They basically say, “If I have a bill here and it shows that these are the bills, then what am I to do?” Whereas the tenants say, “Yes, but we phoned the company and it can’t produce original records of these.” There are a whole bunch of complications here. Cases depend on the degree to which the hearing officer who makes a ruling is prepared to look into the evidence that is before him.

In my case, I was successful in getting about a 12% rollback simply because we did that work. But I was appalled at the guidelines from the government that said, “If the landlord said those were his costs, those were his costs.” What are the regulations and the guidance? I am more concerned about how this is interpreted by the ministry staff, as to how far they are to go in hearing both sides of the argument with the facts presented. They have no right to subpoena, except under appeal, and then it is not really a subpoena.

I am nervous about approving, and I understand why it has to be in there. But if it is only there to pacify tenants because it is now laid out that they should be doing it, but in fact they do not do it, then what have we achieved? That is more a clause to guide the staff, clearly, as to how they approach it. I would like to know what the guidelines are behind that legal requirement in the legislation. That is my question, because my experience is that it has been badly handled and the basis for a lot of appeals.

**Ms Harrington:** Certainly in the past that has been the problem with the legislation we have had in the last five years or more. It was not clear. The reason we are having new legislation is to make it a system that we believe will work. I think you were asking about the regulations. Maybe you could comment, Colleen.

**Ms Parrish:** My answer is going to be somewhat complex. I apologize for that. Later on in the act, there are quite a few provisions designed to deal with problems which have occurred in the past, where incomplete applications are made, for example. There are later amendments that would say that if you have not made a complete application, it is not proceeded with, you have to withdraw your application and bring forward a completed application.

The main problem under the Residential Rent Regulation Act is that the initial decision of the administrator is not made under the Statutory Powers Procedure Act, only the appeal. That is changed under this bill. So rent officers, if they are conducting a hearing, and anybody can have a hearing merely by asking, have the ability to subpoena, to request certain kinds of evidence, the parties have the right to cross-examine and so on. That was one of the main reasons the government was of the view that it should bring forward the ability to have an appeal at the first level, because often these issues as to credibility or proof of evidence could not be dealt with until the appeal level.

It was very costly, because you would go through this whole administrative review and then you would have another appeal later on, because the hands of the staff were really tied in administrative review. They could not look at issues of credibility or whatever. That is changed in this act. There are quite a few provisions later on that we will be dealing with that require more rigorous standards and tests and a greater capacity to test evidence and so on in the matter that you did an appeal.

**Ms Poole:** On a point of clarification, Mr Chair, if Mr Jackson does not mind: I certainly understand the concerns he has been expressing, and have shared them for a number of years. The government has just recently in fact, as of January 14, moved two amendments to the legislation which I think are very helpful: section 52 and section 56. It is probably not in your binder yet, but there would be a package available somewhere where it requires that the application be completed and gives rules for what happens if the application is not complete. It also makes some supporting changes in other sections.

I think this would be very helpful. It would also answer many of the concerns you have, because previously what quite often happened is that administrative review or appeals would be drawn out for inexcusable periods of time



because proper documentation was not filed and would be adjourned and put off for months and months and months. I think at least the amendment to section 52 will answer some of the concerns you have just outlined.

**Ms Harrington:** Thank you very much, Ms Poole, for pointing out that we do hope this legislation is going to work and work well with your help.

**Ms Poole:** I do not think I said I hoped it works, but some parts of it are better than others.

**Ms Harrington:** We hope to get to section 52 and 56.

**Mr Jackson:** There is no question that the original rent review legislation wanted to bring landlord and tenant together with an adjudicator under the Statutory Powers Procedure Act at the earliest opportunity. Under the Liberals we walked away from that under the guise of wanting to avoid confrontation. A lot of de-educating was going on with rent review officers in that process.

But the process certainly comes back closer to the spirit that was in the original rent review documents put forward by our party that said that you avoid much of the acrimony if you bring the parties together early in the process, no question. I did not support the Liberal rent control legislation. I was the only one who did vote against it publicly. But I did for a series of reasons including that one. I have been to appeals under both systems and I am pleased to see at least that is in there, awkwardly worded, but it is still in there.

**Ms Poole:** I share Mrs Marland's concerns about the complexity of some of the wording in here. But having been married to a lawyer for over 20 years, I also am very aware of the other side of it. I guess the catch-22 situation is if you are not extremely precise, which sometimes can be translated as "convoluted," in the wording, you risk creating loopholes that people will use to their advantage.

Has the ministry considered a sort of a primer that would go with this that would be fairly comprehensive, that for each section would explain what it says and why it says it and what is meant by it? I suppose there might be legal ramifications, because the ministry might not want to put itself on the record clearly as to how it interprets certain sections, but maybe if you put "Without prejudice" at the top it could not be used against you in court.

I think that would be extremely helpful, particularly to tenants and to small landlords who all have the same difficulty in interpreting this. It would certainly be very helpful to MPPs' offices, where we have staff who are constantly being phoned to interpret various sections of various acts. If we could have something like that, I think it would go a long way to dispelling the impression out there that this legislation is extremely complex and extremely difficult to understand. Unless that kind of grass-roots assistance is available, I think you are going to get a lot of people who are saying: "Hey, 130 clauses. The RRRA had 131. The wording all seems to be the same. I thought they were going to make it better." You are going to have a lot of people who are going to be extremely disappointed with the complexity of the legislation unless we give them some very basic, simple assistance.

**Ms Harrington:** It certainly sounds like a good idea. I will ask Colleen to comment on whether or not we can do it. If not, maybe we can get some other group at an arm's-length distance to do that.

**Ms Poole:** This is the politician speaking. We come down to the reality of the ministry saying: "Put our own opinions on the line? Are you kidding?"

**Ms Parrish:** We are looking at a number of things for implementation. One of the things we are looking at is a guide for people. I am just expressing my own opinion. I will bring this back to the ranch and see what other folks think about it. I think what is really helpful to people is a guide. You have an order and you are wondering what the heck it says. You have little examples and you say, "This tells you this, that and the other thing," a series of examples rather than just essentially an annotation of the statute. We are working on a guide to an application by a landlord or tenant, a guide to a rebate application, for example, or a guide to your forms and what they mean. We would like to do some work and we are doing some work.

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We are also discussing whether we should have a special outreach perhaps to MPPs' offices so there is a designated person to accept questions for MPPs—often people phone their MPP's office and say, "What is this?"—to try to do a better job, to answer questions that come up from the public through the people they often identify as helpers, which are the members of the Legislature. We are looking at a number of things like that.

We had not really thought of doing an annotation of the statute, because I think it would be used mostly by lawyers, who do not need help. What we want to get at is people who need our help, like small landlords or tenants.

**Ms Poole:** In response to that, I know it would be very helpful to have a guide that basically asks tenants and small landlords, "What the heck is happening here?" and answers that question. Certainly those types of guides were available under the Liberal government and they were helpful.

I am talking about the scenario where many tenant associations do not hire a lawyer because they cannot afford to hire one, or a small landlord who cannot afford to hire a lawyer. While the "What the heck is happening?" guide can be a little bit helpful to them, they really need help in interpreting some of the sections. I have seen tenant associations with the legislation saying, "What does this mean?" If they are going without legal counsel, they really do not have too many places to turn to. Landlords can go to the landlords' self-help centre and tenants can go to the Metro Tenants Legal Services, but the amount of help they are able to provide is fairly limited because their resources are limited. That is why I thought an annotation of just saying in laypersons' language what each of the sections means might be quite helpful to many people.

I am not sure I agree that every organization or landlord that goes before rent review has a lawyer. I have known many instances where they have not and I have known some instances where they have. But in trying to deal with it on their own, they need something more substantial



than just a "What the heck is going on?" type of primer. They need some fairly specific help.

It probably would not be a bad idea to help out your rent review officers as well. They might not think it a bad thing to have the ministry giving them something in writing that says in laypeople's terms exactly what every section is. It may help rent review officers to explain it to landlords and tenants when they come before them.

**Ms Harrington:** We will certainly take that back directly.

**Ms Poole:** Then it gets lost in the morass of the Ministry of Housing, never to be heard from again.

**Ms Harrington:** No, it will be in my office.

**Ms Poole:** A great relief was expressed by the member for Eglinton.

**The Chair:** Mrs Marland, did you have some further comments?

**Mrs Marland:** I just wanted to be sure to place on the record not only the concerns I have about the wording but also that I am totally opposed to this section.

**The Chair:** I should note at this time that your party has an amendment which says that clause 20(1)(c) should be struck out. I will allow you to signify that by voting against it.

Shall the government amendment to clause 20(1)(c) carry?

Motion agreed to.

**The Chair:** Now we are moving to clause 20(1)(d). I believe there is a Liberal amendment to this section. I would suggest, since we are dealing with these individually, the part that says clause (e) should be struck out is not necessary.

**Ms Poole:** The reason the Liberal caucus has moved these amendments is because they refer to an amendment we have later on to subsection 21(5). I do not know whether you would like to stand down these particular sections till after we have dealt with subsection 21(5) or how you would like to deal with this.

**Ms Harrington:** We would agree to stand that down.

**The Chair:** Until subsection 21(5) is dealt with? Do we have agreement we will stand down clauses 20(1)(d) and 20(1)(e)? Moving on then to clause 20(1)(f), questions or comments?

**Ms Poole:** If I am not mistaken, and I am trying to find my copy of the original act here, clause 20(1)(f) is as it was in the original legislation, is it not?

**Ms Harrington:** Yes, it is.

**The Chair:** Further questions or comments? Shall clause 20(1)(f) carry? Carried. Questions or comments on clause 20(1)(g)?

**Mrs Marland:** Rather than subject everybody to a recorded vote, I will again just place on the record that our caucus is totally opposed to all the clauses under section 20, those being from clause 20(1)(a) right through to 20(1)(g).

**Ms Poole:** Since clause 20(1)(g) was not in the original legislation and it is now an amendment in the revised

copy as printed, is the main reason clause 20(1)(g) was put into the revised copy as printed the fact that the government has accepted the costs no longer borne?

**Ms Harrington:** Yes, exactly.

**Ms Poole:** Does this separate out the capital components so that they can be reduced from the tenant's rent at such time as the amortization period is over?

**Ms Harrington:** Yes, and in this part of the legislation we are then instructing a rent officer to take that into account as well.

**The Chair:** Further questions or comments? Shall clause 20(1)(g) carry? Carried. We will move on to subsection 20(2).

**Ms Harrington:** The amount of the guideline to be applied when a rent officer makes findings with respect to an application for an above-guideline increase is set out in subsections 20(2), 20(3) and 20(4). Subsection 20(2) specifies that the guideline applied is the guideline which is in effect as of the first intended rent increase in the application. This is the same as found in the previous rent review system.

**Ms Poole:** If I could just ask for a moment's indulgence, I do not have subsection 20(2) in my binder.

**The Chair:** I believe it is printed, is it not, Ms Harrington?

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**Ms Poole:** It is as printed. Thank you.

**The Chair:** Actually, I think it is part of the original bill.

**Mrs Marland:** It is the original bill.

**The Chair:** Further questions or comments on subsection 20(2)? Shall subsection 20(2) carry? Carried. We have a government amendment to subsections (3) and (4).

Ms Harrington moves that subsections 20(3) and (4) of the bill, as reprinted to show the amendments proposed by the minister, be struck out and the following substituted:

"(3) The part of the guideline allocated to capital expenditure shall not be included in determining the maximum rents for any of the rental units in the residential complex if,

"(a) a capital expenditure is claimed and allowed for the residential complex or a rental unit in it and that capital expenditure is claimed under section 15 or 16; or

"(b) an amount to be carried forward is allowed for the residential complex or a rental unit in it and that amount relates to a capital expenditure originally claimed under section 15 or 16.

"(4) The part of the guideline allocated to capital expenditures shall not be included in determining the maximum rent for a rental unit in the residential complex if subsection (3) does not apply and if,

"(a) a capital expenditure is claimed and allowed for the rental unit and that capital expenditure is claimed under section 17; or

"(b) an amount to be carried forward is allowed for the rental unit and that amount relates to a capital expenditure originally claimed under section 17."

**Ms Harrington:** I would like to explain that amendment, or try to.



**The Chair:** Of course. Ms Harrington has an opportunity to explain it.

**Mrs Marland:** Mr Chairman, can I just ask what you are reading from? Are you reading from the printed page 23?

**The Chair:** No.

**Ms Harrington:** I am substituting subsections (3) and (4).

**The Chair:** I believe the clerk will help you out, Mrs Marland. An explanation, Ms Harrington?

**Mrs Marland:** We have government amendments to the bill which are printed in the bill and we have three sets of further amendments sometimes to the same sections. In order to be able to follow whoever is reading these amendments, it might be helpful to know—I did not want to interrupt the parliamentary assistant once she started reading, but since I did not know what she was reading from I had to wait until she was finished. If you could tell us that you are reading from one of the most recent handouts, this one being as of today's date, correct? Was this one handed out today?

**The Chair:** I appreciate your concern, Mrs Marland, and this is a difficult process to go through; I think we will all agree with that. If members could indicate as soon as possible to the Chair that they are not exactly certain what we are dealing with, we will stop and start again so that everybody is singing from the same hymn-book, so to speak.

**Ms Poole:** Does it have to be a "him" book? Can it not be a "her" book or a "person" book?

**The Chair:** Careful, Ms Poole.

**Ms Harrington:** I hope to clarify this. These amendments clarify that the 2% in the guideline allocated for capital expenditures is not included in the calculation of maximum rent for all units in the complex if there is an application and order for an above-guideline increase for capital. This provision also applies if there is an amount carried forward for capital expenditures from a previous order.

In years when capital expenditure allowances are allocated, the 2% in the guideline allocated for capital must be justified for all units in the complex before an above-guideline increase is allowed for any of the units. The above-guideline amount can be apportioned to the specific rental units affected by capital expenditures.

**Mrs Marland:** This is what we were talking about last Thursday.

**Ms Harrington:** I do not think I remember back that far.

**Mrs Marland:** Was it not what we were talking about last Thursday?

**The Chair:** Please allow the parliamentary assistant to complete her comments, and then Ms Poole has the floor.

**Ms Harrington:** I want to try and sum it up in the shortest phrases possible, and this section is explaining that the 2% within the guideline has to be justified before an order can be issued for above-guideline capital increases.

**Mrs Marland:** Do you understand that, George?

**Mr Mammoliti:** I understand every bit of it, Margaret.

**Mr Owens:** Do not tease the bears, Margaret.

**Ms Poole:** George understands it all, but I am not quite as clear-headed. It must be my cold. I need some help. I would like some clarification. The first line says: "These amendments clarify that the 2% in the guideline allocated for capital expenditures is not included in the calculation of maximum rent for all units in the complex if there is an application and order for an above-guideline increase for capital." That is relatively self-explanatory even though it is long and convoluted.

Basically, that says if the landlord applies for capital expenditure and applies for above-guideline increase, then the 2% in the guideline is not used as part of the calculation of the maximum rent. How is that dealt with in the case where the landlord gets the 2% in the guideline automatically and does not apply for capital? Is the 2% included in the maximum rent in that particular case?

**Ms Harrington:** You would automatically get the guideline, which includes 2% for capital.

**Ms Poole:** If a landlord does extra capital repairs and applies for an above-guideline increase, then the landlord cannot include the 2% as maximum rent. But if a landlord does nothing and makes no capital repairs whatsoever and automatically gets the 2% in the guideline, then the landlord is allowed to have that 2% added on to his maximum rent.

**Ms Harrington:** Part of the guideline in this year would be the 6%, and automatically 2% of that is for capital expenditures. He does not have to tell the rent office what he has spent that 2% on.

**Ms Poole:** What I am trying to come to grips with is the fact that you have two different situations and I am already very concerned that because of the way this legislation is set up landlords will not do capital repairs. They are saying, "Yes, I can claim 3% but you are going to deduct the 2%." You may not use these words or this terminology, but that is exactly how landlords explain it. They say, "I do 3% in repairs and you are deducting 2%, so I am really only getting 1% more than if I did nothing." If landlords do absolutely nothing, then they get the guideline amount which includes 2% for capital.

**Ms Harrington:** Yes.

**Ms Poole:** However, if landlords want to go for an above-guideline increase and get an additional 3%, they must first justify that 2%. So for landlords who have done 3% worth of repairs in a year, in their way of thinking, the landlord who has done nothing automatically gets 2%, but those who have spent 3% only get 1%. That is how they look at it.

**Ms Harrington:** I think you understand.

**Ms Poole:** I do, but I also understand that is what it means in real terms to people. This is saying that for landlords who do capital repairs, the 2% is not included in the maximum rent. That means the next year when they get the guideline amount on it, they will not get it on that 2% included in the guideline. Yet landlords who do absolutely nothing and do not spend a penny on repairs in their building get the 2% included. They automatically get that 2% in the guidelines plus the next year when they get their maximum rent set, the guideline is on the 2% section.



**Mr Owens:** So what is your point?

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**Ms Harrington:** I think we all have to realize that landlords are business people who are in there to provide a good service to their tenants, that certainly the buildings have to be kept up. They realize now that they will not be able to have increases if there are work orders outstanding on those buildings. There has to be maintenance on these buildings and they obviously have to have money put into them every year. I think landlords will catch on very quickly that that is the way the system operates.

**Ms Poole:** With due respect, I think you will find this is one more section that when landlords understand what it means they will say: "Why should I do anything? I'm just not going to do anything till this government's gone and I get a government that is going to let me operate my building and make a reasonable profit." They are not going to go out and buy Manhattan with what they make but—

**Mr Abel:** They are going to have a long wait.

**Mr Mammoliti:** They do not care about the tenants, do they?

**Ms Harrington:** Without a political comment, maybe I could ask my staff person to explain how this will work in a technical way?

**Ms Poole:** Colleen, if you want to make a political comment, go right ahead, we do not mind.

**Ms Harrington:** We have made enough of those.

**Ms Parrish:** I rarely am very decisive. I know I do not want to make a political comment. The way this applies is that the landlord can get 3% above guideline. When they get 3% above guideline, they justify 5% worth of capital. They do not get 1% more than they would otherwise get, they get 3% more. But the principle of the bill is essentially, if you do not apply for more than the guideline, you simply get the guideline amount. It is a simple system for both landlords and tenants. If you want to get more than the guideline amount, you have to justify and give more information. If you want to get this 3% above guideline and it is for capital, you have to demonstrate that you spent the 2% you had already been given plus an additional 3%. You must justify a total of 5%. That is what the act says.

There has been some confusion about whether or not it said that. Later on we have some amendments we brought forward as a result of representations by landlord groups that make that very clear. But the way the act works is that you can justify up to 5%. In the case of capital, you can carry it forward for two more years. You can justify 5% and then you can justify another 5% and you can justify as much as 15% over three years. It is not 1% more that they get, it is 3% above guideline, but they have to justify the 2% they have already gotten. They do not have to justify it if all they are taking is guideline, in the interests of having a simpler system for those kinds of situations.

**Ms Poole:** But the bottom line is that whether they have to justify 5% depends on whether they applied for the full gamut of what they would be entitled to. If a landlord, for instance, does major repairs in a year, for which a 3% increase would be justified, in that particular scenario, because

the landlord has to justify 2% coming out of the guideline, the landlord would get 1%. In the scenario where landlords have done repairs that would amount to a 5% increase, then by the time they have justified the 2% in the guideline they would get a 3% increase.

In the latter case you are talking about 60-cent dollars and, as Ms Harrington pointed out, landlords are business people. They look at the bottom line. If they do absolutely nothing and put not a penny into major repairs in that particular year, they are still entitled to 2% in the allowance. What motivation is there for a landlord to do anything? If you had said to all landlords, "We're putting 2% in but you have to justify it," then if you have other things that attach, that makes sense. But you are putting penalty after penalty on to a landlord who does the repairs.

**Ms Harrington:** No, we are not penalizing landlords who do repairs. Let me try to explain this.

**Mr Mammoliti:** That is kind of a strange logic, Dianne, coming from a tenant advocate.

**Ms Poole:** It is not.

**Ms Harrington:** First of all, you made the point that it would be fairer if every landlord had to justify the 2%. I think you understand that we are trying to go for a system that will work. As you said, it is not simple but it is workable and we do not want to have to get into justifying every single little capital. We understand that every landlord has to do some capital every year and that is what the 2% is.

I would like to go to one other bottom line I think you are almost getting to, that if landlords you are referring to do not want to do any work, eventually they will not get the guideline increase at all—not the 2% but the whole guideline. Maybe I could ask Colleen how that will work into this.

**Ms Parrish:** Certainly if landlords do not do capital repairs over a long period of time, it is quite likely they will end up with a work order or that there will be an application from the tenants which will be justified that there is inadequate maintenance in the building. Then landlords are at risk that they will not get the guideline increase, or even that their rent will be decreased if the conditions are bad enough.

There is an incentive in the system for the landlords to do it, although there is also the incentive that they themselves want to maintain their buildings in reasonable repair, and many landlords have said that.

**Ms Harrington:** I think we have to give the landlords some credit that they are good business people, certainly the majority.

**Ms Poole:** This sounds like a fine theory but all I am saying in reality is that you have not provided an incentive, but a disincentive. I remember very clearly when the Stormont, Dundas, Glengarry Legal Clinic presented before us twice, one on Bill 4 and one on Bill 121, and talked about the whole issue of capital repairs and maintenance. They said they felt it is extremely important that there be both a carrot and a stick, that if you just try to come in with the stick it is not going to work. They gave specific examples where only the stick was applied and that they are having horrendous problems because of it. When other



people say there is an incentive in here to do repairs, there is not much of an incentive. We are talking 60-cent dollars to do the repairs. It is not an incentive.

We come back to my original question, which I do not think I have received a conclusive answer to. Am I correct that if a landlord does not do any repairs, then the 2% is included in the maximum rent and, therefore, the next year the landlord's guideline amount would be calculated on the full amount of the previous rent including the guideline, including the maximum?

**Ms Parrish:** Yes.

**Ms Poole:** If a landlord has done repairs, however, the landlord's maximum rent the following year would be based on the previous rent but not including that portion of the guideline that dealt with capital repairs.

**Ms Parrish:** No. First of all, maximum rent is always based on an order, so when you go to the rent officers they will give you an order that says this is your maximum rent. That is the first thing that will happen. The capital component does not include—remember our discussion about the \$6 and the \$4 and the \$10—that 2% which you have justified. It is only this other amount. The 2% would be treated differently than the 3%; however, the landlord must have justified it. That is the difference.

The only real difference between those two landlords we have talked about—the one that did not apply for anything and the one that did—is the element of proof: One landlord has had to prove more than the other landlord. The reason one had to prove more than the other is because he got more than the guideline. So the financial position is the same but the burden of proof is greater on the landlord who got more money.

**Ms Poole:** I am glad you clarified that because very early on when I asked the question of the landlord who did repairs and the landlord who did not do repairs, my understanding was that the answer was, yes, in the one case it is part of the maximum rent and in the other it is not. But what you have now said is that 2% is not included in the maximum rent in either case scenario if it is part of the guideline.

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**Ms Parrish:** It is actually the other way around. In both cases, the 2% is included in the maximum rent. But that assumes that the landlord—

**Ms Poole:** They are treated identically then.

**Ms Parrish:** But in the second case where the landlord got an above-guideline increase—and he must justify that 2%, and there is always a risk to the landlord that he will not be able to do that—at the end of all this he ends up in the same position but he has a higher burden of proof, if he has to do more justification than the landlord that did not ask for more money above guideline. Essentially we have a simpler system and a system that involves more proof if you want more money.

**Ms Poole:** My head cold is getting to me. I want to be very clear on this. In both cases, the 2% is not included in the calculation of maximum rent, or is it?

**Ms Harrington:** It is.

**Ms Parrish:** It is.

**Ms Poole:** Right here it says very carefully in the reason for the amendment, "These amendments clarify that the 2% in the guideline allocated for capital expenditures is not included in the calculation of maximum rent for all units in the complex if there is an application and order for an above-guideline increase."

**Ms Parrish:** Can I explain to you what that explanation means? It is obviously not a very good explanation since we have to spend so much time explaining it.

Let us suppose you have a building and it has 100 units and you are replacing half the windows in the building. People say, "Are you supposed to consider that 2% for capital only in those 50 units that are having their windows replaced or for the entire building?" All the 2% for all the units. What this clarifies is that you have to take in that 2% from the entire building and say, "How much money is that?" Let's pretend in my calculation I figure out how much that is and I say it is \$10,000. The cost of doing this window is \$50,000. What would happen is that you would first of all say: "Justify the \$10,000, which is your 2%. You did not have to justify that before but now you want more money. Then you have to justify the remaining \$30,000 and then you allocate it. You can allocate it only to those units that have the windows replaced."

You could have a situation where half the units in the building have their rents go up by guideline plus 3%, and the other units in the building actually have their rents go down or stay the same. That is what that section says. Sections later on deal with how you do the calculation for maximum rent.

**Mr Owens:** On a point of clarification, Mr Chair: I hope the minister is going to provide my constituency office and the offices of the other members in this committee hearing with the types of questions that I will have to ask tenants when they contact me to find out about rent increases, such as: "Did you get your windows done? Are you in the top half of the building or the bottom half of the building?" It just seems to be a bit of an onerous formula to try to work out.

**Mr Jackson:** You ain't seen nothing yet. Wait until they ask you whether they open left or right. That is really going to shake up you people.

**Mr Mammoliti:** You are so funny.

**Mr Jackson:** Do you want anger or do you want humour?

**Mr Mammoliti:** That is not called for.

**Mr Jackson:** Which do you prefer?

**The Chair:** Order, please.

**Mr Mammoliti:** In this particular piece of legislation, I am glad for one very specific point: that this piece of legislation is different than Bill 51. I think we can all agree, even the Liberals, that with Bill 51 the onus was put on the tenants to justify. I think we have all experienced that. With this piece of legislation and with this particular clause, I am glad to say, finally, that the onus will be put on the landlord, the one who is spending the money, the one who is doing the work. It has taken a long time for this to happen, so I am glad this particular piece of legislation has changed that.



I would also like to touch on something Mrs Poole said earlier. It is really frustrating to hear this. She said she has heard from landlords that if they have to justify this—tell me if I am wrong—they will stop doing the work and they will leave it until another government comes into play.

**Ms Poole:** May I respond since Mr Mammoliti asked me to correct him? Very briefly, no. What I said is, if landlords cannot get the full value of what they have put into the buildings as cost pass-through, if they are only going to get 60-cent dollars on it, then they said they will wait for another government which will treat them more fairly. That is their attitude.

**Mr Mammoliti:** All right, that is fine. What this tells me is that all those landlords who came in front of us during our tour across the province who have said time and time again that they care for tenants, that there is a moral aspect to being a landlord, and that they are not doing it solely for the profit, they are doing it for the care of the tenants as well, that does not come into play then, if that is the case.

The moral issue here bothers me as well. They came in front of this committee, almost every one of them, and said they care about the tenants and they will do whatever they can for them, at times even spend money out of their own pockets. I have heard that as well. Now what I am hearing is, that is not going to be the case, that because there is not as much profit in this bill to them and their colleagues they are going to stop doing work in the units. That scares me.

It scares me for two reasons. It scares me because I am afraid places will turn into slums and it scares me to know that is already being done, even with Bill 51. I can give you a number of apartment buildings, and I have given you a few examples in my riding already where that has happened. They have not taken advantage even of Bill 51, that great system the Liberals put in place for landlords. I am concerned for the tenants. I also get the impression that Ms Poole, the one who was a tenant advocate earlier in her political career, has now turned and has said that they do not have to and she believes they do not have to justify the 2%.

**Ms Poole:** That is not what I said.

**Mr Mammoliti:** That is what I am hearing and that scares me because you were a tenant advocate at one time. If you are saying that landlords should not have to justify that 2%, that scares me as well.

**The Acting Chair (Mr Morin):** I would like to interrupt you here. As you know, we are dealing with subsection 23(4) so let's maintain it to that. I will give you two minutes to reply and after that we will continue with Mr Owens.

**Mr Owens:** This is a very generous committee.

**The Acting Chair (Mr Morin):** Do you want to reply?

**Ms Poole:** Yes, I do. What Mr Mammoliti has not taken into account is how very angry, frustrated and hostile the landlord community is right now. They are not the same people who came here even a year ago. They are just beside themselves with anger.

I will tell you another thing, I find it just fascinating that I have taken exactly the same stand in government as I do in opposition and yet under government I was told I

was a tenant advocate because there are things I wanted to change in Bill 51, and now I am being told because there are things I want to change in Bill 121 I am a landlord advocate. My stand on things such as necessary repairs, costs no longer borne, luxury renovations and certain protections for tenants have not wavered and not changed. Many of the Liberal amendments have been introduced into this legislation for that reason.

I have always believed there has to be a balance. When I was in government, I felt the balance had swung too far on the one side. Now I see it swinging very dramatically on the other side. Neither is helpful to the housing industry.

**The Acting Chair (Mr Morin):** Mr Owens, it is now your turn. No? Mr O'Neil.

1550

**Mr H. O'Neil:** I am sitting in as a substitute today, and it may not refer to this particular section of the bill, but I would like a little bit of advice, if I may, either from some of the members or from the ministry staff. On many occasions I have had people approach me, and I want to give you a concrete example: An elderly lady may own an apartment building that is worth \$300,000. Over the years she has kept the building up, but has paid it down where the mortgage is maybe only about \$50,000, so she has a cash equity of approximately \$250,000 in it. How does she get a fair return on that \$250,000 that she has invested in that building, because if she had that \$250,000 invested somewhere else, she would be able to draw off approximately 8% on it today. Where does she get her return in this whole structure of the 5% or the 8%?

**Ms Harrington:** Well, certainly you have to look at the whole financial picture.

**Mr Mammoliti:** On a point of order, Mr Chair: Just for the member's information, this question came up time and time again during the tour, and we asked a number of times what a fair return would be to landlords, and they could not come up with a figure. I mean, if we do not know what a fair return is, how can we possibly answer that question?

**Mr H. O'Neil:** I guess what I would look at as being a fair return is if that particular lady, that elderly lady, had \$250,000—her life savings are actually in that building—if she were to invest it in Canada savings bonds or someplace else, I think that you can strike a rate. Today it has dropped considerably, but it might be somewhere in the vicinity of 7% to 8%. You can establish that.

I can understand some feelings where there are large landlords, but you have a lot of people who own smaller buildings, too, who have them paid for and with the expenses they have to look after with heat, lights, water, repairs and everything else today, they should have some type of a guarantee on what they have invested in that building. I wonder if I could have an answer.

**Ms Harrington:** Well, it certainly is not a guaranteed investment. While it is really difficult for me to go from just the information you have given me, if you are saying this person has a \$50,000 mortgage that she is paying, and then the number of units with the rent that is incoming, plus of course the expenses, the taxes and the heating and



whatever else, over many years probably the profit is much more than 8%. I mean, it is going to fluctuate depending on many variables.

**Mr H. O'Neil:** But, you see, in a case like this, 8% of \$250,000, how much is that, \$20,000, she could be getting as a return. There is also the problem with the rent control that over a number of years a lot of people, rather than going over the maximum allowed under rent control and rather than getting into hearings and everything else, have taken what the maximum is, yet their costs have been over that. So this particular person I am talking about has lost money over the years because she did not want to go to a rent control hearing and now is not getting a return on the equity or investment that she has in it. Our government was at fault with this too, I feel, and the previous government, under rent controls. How do you guarantee a small business person, in this case an elderly lady, is going to get a fair return on what she has her life savings in?

**Ms Harrington:** I would say there are some landlords with buildings similar to that with similar types of mortgages who would be making, over the past many years, much more than a rate they would get from a bank, and others who would make less, depending on the other variables.

**Mr H. O'Neil:** If she has made less, how does this bill propose to protect somebody like that? I guess that is what I am asking.

**The Acting Chair (Mr Morin):** Are you through, Mr O'Neil?

**Mr H. O'Neil:** I would like an answer.

**Mr Jackson:** He asked a question, in all fairness, and the parliamentary assistant was in the process of answering until you interrupted her. He asked the question which section of the bill—

**The Acting Chair (Mr Morin):** Yes, she did answer. I beg your pardon, if you have any comments to make to the Chair. If you do not, you could pass—

**Mr Jackson:** I was looking right at you when I said that.

**The Acting Chair (Mr Morin):** Yes. At the same time, I do not have to give you any reason. Mr Mammoliti wanted the floor. I asked Mr O'Neil if he was satisfied. What did he answer? He said it was okay. You are not satisfied?

**Mr H. O'Neil:** No, I am not.

**The Acting Chair (Mr Morin):** Okay.

**Mr H. O'Neil:** If that lady were to go to a rent review hearing, to approach rent review, how would you protect in that case?

**Ms Harrington:** We do not offer guarantees, as I said in my very first comment. This is a business; these people have to make investment decisions. Usually, if that building was bought some years ago and the mortgage at this point is very much reduced, the person would be in a good financial position. If there are capital expenditures and above-guideline extraordinary operating costs, then certainly she should apply above the guideline.

**Mr H. O'Neil:** Where I see the unfairness of this is that if, rather than investing \$250,000 in that building, she

went out and got a mortgage for \$250,000 and only had \$50,000 equity in it, she would be able to pass down a certain percentage of that mortgage interest. Or if she sold the building to a new purchaser, took her money out of it and put it into a savings certificate or something like that, she would be a heck of a lot better off. That is one of the weaknesses I see in this bill, where you are not affording protection to some of the small owners of apartment buildings.

**Ms Harrington:** We have had extensive discussion about whether the financing costs of buildings should be passed through to tenants, and the decision of this government is no, those people who buy the buildings are responsible for financing them.

**Mr H. O'Neil:** But that is not the case in this issue. This is the equity this elderly lady has, approximately \$250,000, and she is getting no return on that \$250,000. That is her life savings, something she would have been better to have had sit in a bank account somewhere or a certificate to draw interest on. She has invested in property and you are not giving that type of person—I know there is a problem.

**Mr Mammoliti:** But it is a long-term investment. This is something that—

**The Acting Chair (Mr Morin):** Just a minute, please. Do you have any more to add, Ms Harrington?

**Ms Harrington:** I do not think I can, because you are talking about a particular case.

**Mr H. O'Neil:** There are a lot of cases like that out there.

**Mr Mammoliti:** This is interesting because this is a question that came out time and time again. I asked in particular, "Are you looking for a short-term investment or a long-term investment?" I believe our legislation deals with this particular area. It relates to it as a long-term investment. The difference between our bill and Bill 51 is that Bill 51 gave the impression that you could get a short-term investment out of that piece of legislation. This piece of legislation, I think and agree, will motivate individuals, landlords, business people into a long-term investment.

**Mr H. O'Neil:** But again, you have to have a return when it is a long-term investment too.

**Mr Mammoliti:** I think the return will be there. If you are looking at a 25-year return, then I think you will get that 7% or 8%, even more, in 25 years. But the problem is that we got too spoiled. The landlords out there got too spoiled with Bill 51 and were able to turn around and make a profit in a couple of years, in some cases even six months. When legislation allows that to happen, that is why everybody is ranting and raving now, because that is not going to be able to happen with this piece of legislation. They know they are going to make their profit in 20 years as opposed to six months, and they are a little upset at that.

**Mr Jackson:** I do not wish to participate in this debate, but it is interesting that no government has the political will to reduce rents for tenants, because it gets 50% of the profits of the sale of any apartment building in this province. It goes immediately into the coffers. Second, the land transfer tax is ungodly high in this province. Whether you



want to admit it or not, if you really wanted to allow the purchasers to move in and out of their investments and to insulate the tenant from those costs, you would be looking at the capital gains and the land transfer tax, all expenses that contribute to the condition which does not allow rents to drop.

Let's not dwell too long on this, because I am being encouraged to participate. There is a lot of information that should hit the table if we are going to debate this issue. I thought, Mr Chairman, your instructions were that we were going to proceed vigorously with that section after the previous three speakers.

1600

**Mr Jamison:** I just have to comment briefly that certainly most landlords I know buy buildings for long-term investment purposes. If you follow the history of prices, you will find that there is an increase in the value of property at that point. The increases in rents—we cannot singularly focus—in a number of cases have been absolutely dramatic, for poor reasons at times.

The whole question is not just equity as far as income to pay the mortgage is concerned, because certainly they are going to have to be able to pay the mortgage in the beginning or be able to be seen as paying the mortgage in the beginning to purchase a building, just as you would a mortgage on a home. I think it is singularly minded to look at profits and so forth in the one singular vein. A person who owns the building for a lengthy period of time is certainly in a much better position to make a profit through the rents garnered, as long as he has been paying his mortgage through the years. People who own buildings longer than others make a better profit. To me, you have to look at both sides of the equation.

Just as a last point, it is funny that we are talking about this when inflation is dropping; it is supposed to be 2.5% next year. We are talking about figures that are much higher than that. Much of the argument becomes moot at this point and we will find it will happen that way. On the same hand, around one third of living expenses for renters is rent. If their rents are allowed to increase dramatically, especially at this point, that will affect the wage demands people have. Certainly those things all have to be taken into consideration when we talk about how we level off the peaks and the valleys, because that is what has happened in the past. A number of things have directly fuelled those peaks and caused the valleys to happen later on in the economy itself. I think when you speak about equity, there is more than one form of equity in property. There certainly is and always has been.

**The Acting Chair (Mr Morin):** Are there any further questions or comments on Ms Harrington's amendment?

**Mr H. O'Neil:** Just a very short one. I understand the rent increases over the years and I also understand the escalation of the value of properties as something that has accumulated. I am looking at a true return over the number of years. This person I am talking about and others have held on to property. If they had invested in something else, the return would have been higher.

Also you must understand, and I know you have touched on this, that although you have a few bad landlords who always seem to come to the top—I look back in some of our own ridings, some of the smaller areas and even the city here. There are people who are good landlords who have plowed all their profits back into buildings by proper upkeep where their buildings are top-rate and have neglected to have a proper return because in a way it contributes to the value of the asset. The majority are good people who have poured that money back and are not getting a proper return on their investment. They would have been better to invest it someplace else. Now they cannot really.

**The Acting Chair (Mr Morin):** Are there any further questions or comments on Ms Harrington's motion?

**Mr Mammoliti:** Can I have five minutes, please?

**The Acting Chair (Mr Morin):** There will not be a vote on this immediately, because there is an amendment to the amendment. Is it agreeable that we should proceed with that? Ms Poole, I believe you have an amendment on the amendment.

**Ms Poole:** That is right, Mr Chair, I have an amendment to the amendment.

**The Acting Chair (Mr Morin):** Ms Poole moves that the government's amendment to subsection 20(3) of the bill be struck out and the following substituted:

"(3) If a capital expenditure is claimed and allowed for the whole residential complex or an amount to be carried forward is allowed for the whole residential complex, the amount allowed in respect of the guideline for all of the rental units in the residential complex shall be reduced by 1 per cent."

**Ms Poole:** I also have one to subsection 20(4), but I believe the procedure we are following is to vote on them individually and deal with them individually.

**The Acting Chair (Mr Morin):** That is correct.

**Ms Poole:** The substance of this amendment to the government amendment would say that instead of the reduction being 2%, it would be a 1% reduction. I am extremely concerned that because of the way this legislation is laid out, many landlords will not do the major capital repairs. It is all well and good to say there is a 2% allowance in the guideline, but if the guideline is the almost identical total amount it was under the old legislation and if the old legislation had allowance for profit built into it, then landlords are looking at the bottom line and saying, "When I look at this guideline amount, I'm not getting any more today than I did yesterday and yet I'm expected to do 2% worth of capital repairs with it."

We have to give landlords an incentive instead of a disincentive to do those capital repairs. I completely agree with the tenant argument that if a certain proportion of the guideline amount is to go to capital repairs, then landlords should be using it for that amount. However, when you arbitrarily just declare that the amount is 2% and that landlords who do capital repairs will not get full cost pass-through for those capital repairs, then you have set up a scenario where there is no incentive for a landlord to go and do those capital repairs.



Let me put it to you this way: If you are sitting there and you are going to get a 6% guideline regardless of whether you do capital repairs or not, and if there previously was a guideline amount for profit and that is taken away, and if landlords are being squeezed right now and looking at the bottom line, then why would they take their money and put it into capital repairs? That is the problem.

We have all heard expert testimony, and also lots of speeches, about our aging housing stock, but it truly is a reality. No, they are not going to fall down in three years, but if the expenditures are made three or four years from now as opposed to today, they will cost more and will certainly have to be done on a more expansive and extensive scale than if they were done today. We are not saying they will not do them at all. I am saying they are going to delay doing them unless you give them some incentive and reason to go and do those repairs.

We will obviously have numbers that will track over the next few years how many capital repairs are being done, but I am willing to place my money on it right now, at this very moment, that if we do not give some incentive to landlords to do those repairs, and more particularly if we provide a disincentive for them to do the repairs, then they are not going to do them. They are going to delay them. They are going to play the roulette wheel and hope that another government will recognize full cost pass-through, not just part of it.

1610

Whether or not you agree with what landlords are saying when they say, "We're only going to get part of our money back," landlords who do nothing get 6%. If, say, we go and do 3% worth of repairs over and above the amount allowed in the guideline, 3% total repairs in the building, 2% is allowed in the guideline. They would have to justify 2%, so they get 1%. The way they are thinking—and I know this, because this is what they are telling me, and a lot of them are small landlords who cannot understand what is happening—all they know is if they do major repairs they are not going to be able to get all their money back.

This also gets into the whole issue of what is going to happen when a landlord goes to the bank to get money for major capital repairs and the revenues are not there to support it. Certainly the financial institutions have told us this is not a fantasy. This is reality.

What this amendment attempts to do—it certainly would have a chance of doing it if it were passed—is to at least provide some incentive for those landlords by saying, "Yes, you'll still have a reduction, because we do feel that part of the guideline should be going to capital, but instead of penalizing you by 2%, we will penalize you by 1%."

The bottom line is you might have some more landlords who are going to do those capital repairs—which I think has to be our bottom line, because our housing stock is not in great shape, and it is getting worse by the day. I do not want to see projects delayed for three, four or five years, while landlords find out how the dust is going to settle.

With the amount of hostility, anger and frustration out there right now, I do not even know if this amendment is going to help, because some of them are just pulling in their horns and saying: "No way. I'm not going to have

anything to do with it." This is an attempt, which I hope the government will accept, which would hopefully make sure that more repairs are done, because if a landlord can get more of the cost recouped, then there is more of a chance that he will do the repairs.

Oh, our real Chair is back.

**The Chair:** Thank you, Mrs Poole.

**Ms Poole:** Nice to see you back, although Mr Morin did an exceptional job while you were away.

**The Chair:** Are there further questions or comments on Mrs Poole's amendment? Shall Mrs Poole's amendment to subsection 20(3) carry? All in favour will raise their hands. Opposed?

Motion negated.

**The Chair:** Mrs Poole, you have an amendment to subsection 20(4), amending the government amendment to subsection 20(4).

**Ms Poole:** Just on a point of procedure, Mr Chair: I wonder if we should vote on the government amendment to subsection 20(3) first.

**The Chair:** The way the government amendment is printed and the way Ms Harrington read it in is both subsections 20(3) and (4), so we will deal with your amendment to subsection 20(4), and then we will vote on the government amendment.

**Ms Poole:** Since subsection 20(4), the Liberal amendment, related to our subsection 20(3), there does not seem to be a lot of point in pursuing it since our other motion failed. I withdraw it.

**The Chair:** So you will not place it. Thank you.

Then we will deal with the government amendment to subsections 20(3) and (4). Shall Ms Harrington's amendment to subsection 20(3) and (4) carry? All in favour of the government's amendment to subsections 20(3) and (4)? Opposed?

Motion agreed to.

**Mrs Marland:** Did we vote on subsection 20(7)?

**The Chair:** No, we have not gotten that far, Mrs Marland.

Mrs Poole, you have an amendment to add subsection 20(4.1).

**Ms Poole:** Yes, Mr Chair. Indeed, I do.

**The Chair:** Ms Poole moves that section 20 of the bill be amended by adding the following subsection:

"(4.1) Subsections (3) and (4) do not apply in respect of a capital expenditure that relates to substantial restoration of concrete if that restoration is necessary to protect the safety of the tenants or the building."

Do you wish to speak to your amendment?

**Ms Poole:** Yes. I feel this is a very important amendment because it deals with an issue that is vital to buildings' safety, and vital to tenants' safety, when it comes right down to it.

I think all of you will remember the expert testimony we received, not only from the Concrete Restoration Association of Ontario but from other parties as well, concerning



restoration of concrete and how it is extremely vital to the integrity of the building.

What we have with concrete restoration deals primarily with underground parking garages, but it can also deal with things such as balconies. The reason these are vital is that if this work is not done, the building tends to fall down. That may seem like quite a dramatic statement, but it is indeed true, because it goes to the very foundation of the building, when you are talking about underground parking garages.

These expenditures are extremely expensive. Depending on the size, they could cost \$200,000, they could cost \$1 million, they could cost \$1.5 million, they could cost \$2 million. As you can see, this is a substantial amount which must be done if the integrity of the building is to be protected. Many of these particular concrete restoration projects have already been done in Metropolitan Toronto, but there are still an outstanding number that remain to be done.

There is a very real concern on the part of the concrete restoration association that with the projects costing so much, and therefore it being absolutely essential that landlords be able to receive financing for them, if there is not some relief to the 2% rule, they indeed will not be able to get financing.

You can put as many work orders on as you want, but you cannot get blood out of a turnip, as the old saying goes, and if you have something very substantial, such as a \$2-million or even a \$1-million concrete restoration, it is absolutely imperative that it be done. To put roadblocks in the way of it being done, I think, is unconscionable. The very safety of the tenants will certainly depend on that.

It is a very, very specific capital expenditure that this particular motion refers to, only restoration of concrete, and specifically we have said a number of things. One is that it has to be substantial. We are not talking about every time that a landlord has to do some concrete restoration to a garden wall; we are talking substantial. Second, we said that it has to be necessary to protect the safety of the tenants or the building, so this is vital concrete restoration. Obviously the government could feel free to put in specific tests of what "necessary" and "substantial" and these items are in its regulations.

I think if the government deems, in its wisdom, that it is not willing to accept this amendment, then the government should also take the responsibility for the scenario where a portion of a building does collapse because the underground parking has not been restored, because it was the technology of the mid-1960s, when many of these buildings were built. At that time they did not know the technology they were using was faulty.

Most of these underground parking garages should have been restored within the last five years or so. Certainly, many of them are in the planning stages right now, so a number of them are at that crucial point where if that concrete restoration is not done within the next few years, it very much could put the building and the tenants in jeopardy.

Those are my comments at this time.

**Mrs Marland:** We support this amendment by the official opposition. Even with the wording with regard to protection of the safety of tenants in the building, the

government members would be hard pressed to vote against this, I would suggest with respect.

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**Ms Harrington:** Certainly concrete restoration is a vital and important part of the upkeep of a building. As you have noted, for the buildings that were built in the 1960s and early 1970s, this is something many are looking at at this particular point in time with the new technology.

To get directly to your amendment, first of all, it would be inconsistent to have this one particular type of capital expenditure treated differently. The real heart of this is that, with this large expenditure, it would certainly be easy to justify an above-guideline increase. In essence, this particular amendment is not going to make a difference. If they are going to do concrete restoration, they are going to be using their 2% plus their 3% cap. It certainly could be easily justified. I do not see that there is going to be any problem with that.

**Ms Poole:** I do not think there would be any doubt that it could be justified, but the parliamentary assistant also has to consider the fact that other capital repairs have to go on at the same time. You are saying the full amount of the 2% would have to go to the concrete restoration. Let's put it this way: In the case where we are talking about \$1 million and the landlord wants to put that through as a rent increase, that would be a substantial amount over the years. Whatever you allow as the carry-forward, the landlord would be using up the full amount for the concrete restoration and there would still be a substantial amount which the landlord could not claim. That would be your typical scenario. Even allowing the full 3% cap, even allowing the 2% which the landlord might put to something else but does not—

**Ms Harrington:** Going to capital expenditure or other?

**Ms Poole:** That is right. I am saying even if the landlord does this, concrete restoration is such an expensive procedure that in many cases it would not be sufficient to cover the landlord's expenses. Then you put on an extra burden of saying that the 2% has to go to the concrete restoration and not to something else.

**Ms Harrington:** No, we are not saying that. It is up to the landlord. In his long-term planning, this is a major expense. It is something he has probably seen coming for years. In this kind of economy, landlords have to do long-term planning to make sure their buildings are safe and well maintained.

**Ms Poole:** The parliamentary assistant says they are not saying this, but the reality is that is the intent and that is what will happen. If the landlord has only X amount of dollars and he has to do concrete restoration, there will be no money for anything else for as long as carry-forward is allowed. Even then, as I say, it is most likely not going to fully cover the landlord's expenses. That raises the problem of whether the landlord can get financing if he cannot recoup it through the rents.

This is only part of it. In subsection 21(5), if I am not mistaken, which is many amendments later from here, we have an amendment that would extend the carry-forward period for concrete restoration, because it is vital work and



we want to ensure it is done. Yes, it is treating it differently than other matters, but I think this is something that could be life-threatening. It is certainly something that could affect the safety of tenants. So for that very reason it should be treated differently than other capital expenditures.

**Ms Harrington:** There are many other capital expenditures which one could categorize. If we exempted this one or made a different set of rules to apply to this, then I am sure we would be opening the door to many other problems in the building which could be categorized as life-threatening.

**Ms Poole:** Although you could certainly say if the wiring, elevators or that type of thing was not redone it could be very dangerous, I do not think there is anything as dangerous as the effects of what would happen if proper restoration of concrete is not done. My feeling is that it should be a priority of this government to ensure that anything which could be life-threatening to tenants gets done, exception or not.

You say you want to protect tenants, but tenants are concerned about more than rent increases. Tenants are also concerned about their safety in the building. They are also concerned that they do not live in slums, so there has to be some accommodation and compromise somewhere along the way where you say this is a different scenario than landscaping.

**Ms Harrington:** I would just like to make one final comment. What you are suggesting here would have the effect of having the 2% go to non-necessary capital repairs, landscaping or whatever the landlord decided, and then only 3% above guideline would go to this particularly vital thing. We disagree with that and feel that all of the money for capital should go to this vital area. If you exempted it, that scenario could take place.

**Ms Poole:** Then I am really looking forward, in my later amendments on carry-forward, to your granting the fact that concrete restoration is an area which deserves further carry-forward, because you are saying on the one hand that you do not want to give them any benefit in this particular section, but I think you have said earlier in your remarks that it was vital. When we get to subsection 21(5), I will look forward to your granting them a longer carry-forward so that we can make sure this vital work gets done.

**The Chair:** Thank you, Mrs Poole. Further questions or comments? Mrs Marland has requested a recorded vote.

The committee divided on Ms Poole's motion, which was negatived on the following vote:

#### Ayes-3

Marland, O'Neil, H., Poole.

#### Nays-6

Abel, Harrington, Jamison, Mammoliti, Owens, White.

**The Chair:** We then have a Liberal amendment to subsection 20(4.2).

**Ms Poole:** Mr Chair, since the Liberal amendment to 20(4.2) related to having a capital reserve fund for tenants for new buildings and since the government has seen fit to

deny tenants that capital reserve fund for new buildings, we will withdraw 20(4.2) since our main motion failed.

**The Chair:** Thank you, Mrs Poole. We are then looking at subsection 20(5) as printed. Am I correct?

**Ms Harrington:** Yes, I believe that is correct.

**The Chair:** Is there an explanation?

**Ms Harrington:** Yes. Subsection 20(5) provides elements used in calculating the capital expenditure allowance which are the costs of the capital expenditure, interest at prescribed rates, the value of the landlord's own labour and useful life of the work done or the thing purchased. There will be prescribed rules setting out time periods, the interest rate amount and the useful life periods etc.

**The Chair:** Thank you, Mrs Harrington. Questions, comments or amendments. Shall subsection 20(5) carry? Carried.

1630

**Ms Poole:** I said opposed and she said opposed.

**The Chair:** If the sense is that it is carried, it is carried. But I can hear wrong if someone suggests that.

We are on subsection 20(6).

**Ms Harrington:** Subsection 20(6) sets out a rule for capital expenditures allowed in an order made under earlier legislation. If such a capital expenditure is replaced, the allowance given for the initial capital expenditure will be subtracted from the allowance which is given for the replacement capital expenditure. This is similar to the replacement rule under the RRRRA; however, the test for determining whether this rule should apply will now depend on whether the order which allowed the initial capital expenditure had a first effective date on or before August 1, 1985.

Note that this government amendment clarifies rules for capital expenditures allowed on an order made under previous legislation being replaced under the Rent Control Act and the capital is being replaced.

**Ms Poole:** As the parliamentary assistant mentioned, this section was based on a section in the RRRRA. Basically it just makes a lot of common sense. If a landlord buys a furnace and the cost of it is amortized and put through in rent increases, once that amortization period is up, say 20 years, and the furnace is paid off, if the landlord buys a new furnace the only difference a tenant would pay would be the difference between the old furnace and the new furnace. The landlord could not put a whole new furnace through. He would have to take into account he had been getting rent increases for the old furnace. It would seem to me to make a great deal of sense to continue this with some improvements to it.

**The Chair:** Shall subsection 20(6) carry? All in favour of subsection 20(6)? Opposed? Carried.

We will pause for a couple of moments while consultation takes place.

**Ms Poole:** The Liberal caucus has an amendment which we had labelled subsection 20(7). Then the government had the act reprinted with the new subsection 20(7) in. I have just talked to legislative counsel and we would like to propose the Liberal motion as subsection 20(6.1) instead of subsection 20(7).



**The Chair:** Ms Poole moves that section 20 of the bill be amended by adding the following subsection:

“(6.1) If a rent officer intends to permit an amount for capital expenditure, the rent officer shall include in the findings a schedule of approved increases for capital expenditures, their related amortization periods and the dates when the costs of these expenditures will no longer be borne.”

Ms Poole, you might want to explain that.

**Ms Poole:** Yes, I would be happy to. This was a new section we put in to specify that the amortization schedule on approved, above-guideline capital expenditures would include a date when capital costs would no longer be borne and to have that included in the tenant's rent.

This marches with a section we had tabled as an amendment to have a cost-no-longer-borne provision in the legislation. The government in the meantime, when it tabled its amendments, had a very similar provision, so I am hoping this particular section, subsection 20(6.1), will meet with the government's approval and will help it in its cost-no-longer-borne issue.

**Ms Harrington:** As Ms Poole has stated, the government has brought forward clause 20(1)(g) which deals with a similar thing. The government amendment already has been proposed. In fact, we have passed it. It goes further by eliminating the compound effective guidelines on capital expenditures, so in effect this particular section is not needed.

**Ms Poole:** I am so delighted that the ideas of the Liberal Party were taken to heart by the government and that it in fact adopted the idea as its own, particularly after a year of my ranting and raving over it. If this has been helpful to them, then I am very glad we could be of service.

**Ms Harrington:** I have been through a lot over the last year. It has been most helpful.

**Ms Poole:** I wore them down. It was called persistence. You just bring it up every day.

**The Chair:** Shall Ms Poole's amendment to subsection 20(6.1) carry? All in favour? Opposed?

Motion negated.

**Ms Harrington:** Subsection 20(7) provides that where a capital expenditure has been allowed under a prior order under Bill 121 and has been replaced before its useful life has expired, the capital component for that prior capital expenditure will be removed from the maximum rent on the application. This is a government amendment that provides a different replacement rule for capital expenditures allowed under Bill 121 which are replaced before the amortization period has expired.

**The Chair:** Questions or comments? We will pause for a moment.

**Mrs Marland:** I cannot find the one that the parliamentary assistant is reading from.

**Ms Harrington:** That may sound very similar to what we just did.

**Mrs Marland:** But it does not indicate this.

**Ms Harrington:** This is under Bill 121. The other was responding to an order that was issued under the RRR, so really they are the same intention.

**The Chair:** Has everyone found the place?

**Mrs Marland:** This section is related to the amendment we have on subsection 22(3). Am I correct?

**Ms Parrish:** If I may assist, I think it is related to subsection 20(8). You have two amendments, one to subsection 20(8) and one to subsection 22(3). I think those are related, and we are only on subsection 20(7).

1640

**Mrs Marland:** I guess what I need then, before I speak on it, is whether the government is going to accept our amendment to subsection 20(8).

**Ms Parrish:** If I may speak to that, I am sorry I did not have the opportunity to speak to you just a little earlier. I think, in principle, we are not opposed to the amendment to subsection 20(8). We would like to request that we be given a little bit more time and perhaps have some discussions with you. We are not opposed to the principle in subsection 20(8), but we think there are some technical problems. For example, the section does not indicate whether, when you do the calculation for extraordinary operating cost increases, you do it at the beginning or at the end. It also does not set out what you do if you are calculating an increase only for an individual unit.

There are a few little technical things about it that I think do not quite work. We could try, if it is agreeable, to work with our staff and with you, Mrs Marland, whoever is advising you, to make it work from a technical viewpoint. Most of these kinds of rules would be what we would normally set out in regulation, but if it gives people a higher comfort level to set it out in the statute, we could set it out in the statute. As I said, the only objections we have are that some of the rules technically just do not fit, because we have forgotten about the individual units, or it does not include when you take the fuel bill out, first or at the end. So it is mostly a technical discussion we would like to have, if we could have just a little bit more time.

**Mrs Marland:** Maybe I will read the comments I have here into the record.

**The Chair:** On subsection 20(7), Mrs Marland?

**Mrs Marland:** On subsection 20(7). We can do it both ways. If the government is about to accept our amendment, which follows this section, then I gather that subsection 20(7) would have to be deleted.

**The Chair:** Just one minute, Mrs Marland. We will find out about that.

**Ms Parrish:** Subsection 20(7) is essentially very similar to section 20(6). All it says is that, to take the analogy used by Mrs Poole, if there has been an order under the act to replace the furnace, and normally that would have a 15-year amortization period or whatever, and the landlord decides to replace the furnace after 10 years or 12 years, when you do the calculation, you take out the amount he already got, and then you add on the new cost. Otherwise the landlord would get the same amount of money twice. That has been in the Residential Rent Regulation Act, and that rule



was carried forward in subsection 20(6). All subsection 20(7) says is that the same rule applies if the order was obtained under the Rent Control Act or under the RRRA.

**Ms Harrington:** Mrs Marland, it is my understanding that if we could deal with subsection 20(7), a request has been made that we stand down subsection 20(8) because we are still dealing with your amendment, if that would be satisfactory.

**Mrs Marland:** Okay. If we are going to deal with subsection 20(7), I am going to read some comments into the record.

Interjection.

**The Chair:** Mrs Marland has every right to speak to subsection 20(7). Go ahead.

**Mrs Marland:** There is obviously a great deal of concern about a lot of the sections of this bill, but apparently the amount of concern and opposition to the principle of cost-no-longer-borne is relative to this section.

In order to deal with subsection 20(7), I have to give you a little preamble. Apparently the government officials have assured the people concerned that when the capital component is removed from rents once the amortized life of an item expires, the intention is that only the above-guideline increment should be removed. That is, for an item which generated an increase above guideline of 3%, only the equivalent dollar amount would be removed at a later date, not the 2% guideline component as well. This is not set out in the legislation.

Subsection 20(8) refers to the capital component as "the prescribed part of the allowance," with all of the details of the calculation to follow in the regulations. This is a substantial concern because the people have not yet had public assurance from the minister that she agrees with her officials as to how this will be calculated. Also, there is no guarantee that in the end the regulations will reflect this position or that they will not be amended later with no opportunity for public debate.

In addition, the suggestion is that subsection 20(7) of the bill should be deleted altogether. This subsection says that if a capital item is replaced before its capital component has been removed from the rent base, for example, before its amortized life is complete, the original component must be removed before the new one is calculated.

To understand why this is a problem, it must be remembered that the amortization periods set out in the useful life tables are rough averages. There will always be components which wear out before their designated life through no fault of the landlord, and others which last longer than the tables say they should.

Bill 121 proposes that if a component last longer than specified, there is no benefit to the landlord since the capital component is removed from the rent as soon as the amortization period is complete. Yet if a component must be replaced early for any reason, the landlord will never receive the full amortization payments for the first installation.

Take the example of a balcony railing which should last 10 years. If in year five the municipality passes a new standard requiring a different type or size of railing, the landlord will have no choice but to comply even though

the existing railings will have faced only half of their useful life. Rent review will disallow the remaining years of cost recovery for the first railing before making allowance for the second, meaning the landlord will be out of pocket for half the original cost because of a change in policy by the local government.

Removing subsection 20(7) will not allow landlords to gain any untoward advantage; it will simply ensure that they are not further penalized. Since the tests in subsection 15(2) will still apply, the capital work will have to be necessary for one of the enumerated reasons. There can be no question of components being replaced unnecessarily, and since with the 2% dilution a landlord is always in a worse position if he does capital than not, there is an active disincentive to such behaviour even if it were allowed.

I think actually that is quite clear, even though you were not listening.

**The Chair:** Every word, Mrs Marland. Are there further questions, comments?

**Ms Harrington:** I believe, Mrs Marland, some of your comments did refer to subsection 20(8), which we ourselves have asked to look at. Perhaps we could deal with that—I am not sure if tomorrow would be suitable.

1650

**Mrs Marland:** You did not think they referred to why we do not need subsection 20(7)?

**Ms Harrington:** Yes. Would you like to clarify that?

**Ms Parrish:** I guess since subsection 20(6) has already been passed and it is the same principle, it would be inconsistent not to have subsection 20(7). Subsection 20(6) says that if the order was given under the RRRA and it is prematurely replaced, then there is an offset. Subsection 20(7) is exactly the same rule, only the order is given under the Rent Control Act. If we did not have subsection 20(7) and had subsection 20(6), then you would have substantially different treatment, depending on when the order was given.

Some of the other points you have raised are in subsection 20(8), which is whether there should be greater clarity as to how the calculation is made; for example, the rule about what comes out at the end of the amortization period and what is the maximum rent.

As I said, at a staff level we have looked at that and, except for some technical problems, we would be prepared to look at it. We would like to have that opportunity. On subsection 20(7), my understanding is this is the government's policy and it is the same policy which exists under the current act as well.

**Mrs Marland:** Where does subsection 20(6) refer to the RRRA?

**Ms Parrish:** It says an order given under a previous act. It refers to the date, the statute in place on August 1, 1985. That essentially is the period in which the RRRA was in effect.

**Ms Poole:** I think the government is going to ask to stand down subsection 20(8) so it can take a look at it. Just so I can reflect on this during the period it is stood down, my understanding is that this particular section came about because of conversations between the Fair Rental Policy



Organization of Ontario and the government. The FRPO expressed concern that the calculations, if they were in the regulations, could be changed at any time without appropriate consultation and feedback.

They were quite concerned about this, and members from the Ministry of Housing had expressed the opinion that they were not really opposed to putting it directly in the legislation so that it could not be changed without some process. Is it correct that the substance of subsection 20(8) is really to put into the legislation what previously had been planned to be put into the regulations, or is there more to it that I should be considering?

**Ms Harrington:** I will ask staff to answer your question.

**Ms Parrish:** Essentially you are right. There was a sense that the act was insufficiently detailed as to the kinds of calculations and that it could make a big difference, so we put in subsection 20(8) to clarify certain things.

I do not want to speak for Mrs Marland's amendment, but it appears that her amendment goes further along in terms of setting out all the calculations. There is always a judgement as to when you should have something in a

statute and when in regulations. The only concern we have about Mrs Marland's more detailed motion is that I think there are a few technical errors, but we could fix them. It comes down to the committee's deciding whether or not it really wants all this detail in the statute, with no flexibility in regulations.

**The Chair:** Further questions, comments on subsection 20(7)? Shall subsection 20(7) carry? All those in favour? Opposed? Carried.

On subsection 20(8), I take it there is unanimous agreement to stand this section down. Do we have unanimous consent?

Agreed to.

**Ms Harrington:** We would ask Mrs Marland to be able to meet with some of our staff.

**The Chair:** Given the hour, this might be an appropriate time to adjourn. I do not think we will get through a section in three minutes.

The committee adjourned at 1656.

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First Intercession, 35th Parliament

## Official Report of Debates (Hansard)

Tuesday 21 January 1992

### Standing committee on general government

Rent Control Act, 1991

## Assemblée législative de l'Ontario

Première intersession, 35<sup>e</sup> législature

## Journal des débats (Hansard)

Le mardi 21 janvier 1992

### Comité permanent des affaires gouvernementales

Loi de 1991 sur le contrôle  
des loyers



Chair: Michael A. Brown  
Clerk: Deborah Deller

Président : Michael A. Brown  
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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON GENERAL GOVERNMENT

Tuesday 21 January 1992

The committee met at 1012 in committee room 1.

### RENT CONTROL ACT, 1991

#### LOI DE 1991 SUR LE CONTRÔLE DES LOYERS

Resuming consideration of Bill 121, An Act to revise the Law related to Residential Rent Regulation / Projet de loi 121, Loi révisant les lois relatives à la réglementation des loyers d'habitation.

Section 21:

**The Chair:** The standing committee on general government will come to order. The business of the committee is to consider Bill 121 clause by clause. Today we will be commencing with subsection 21(1), to be precise. Questions, comments, explanations, amendments to subsection 21(1)?

For members' information, this is a clause as printed in the original bill. Shall subsection 21(1) carry? Carried.

Subsection 21(2): We have a government amendment to this section.

**Hon Ms Gigantes:** Yes, as reprinted in the bill before committee members, Mr Chair. Would you like me to read it or would people prefer to read it by themselves?

**The Chair:** Minister, if you could help me, is this as printed?

**Hon Ms Gigantes:** As printed.

**The Chair:** It is as printed, so there is no necessity to read the amendment. We would appreciate an explanation however.

**Hon Ms Gigantes:** Essentially, this clause applies the cap of 3% to above-guideline increases.

**The Chair:** Questions, comments?

**Mr Jackson:** I believe there is a Progressive Conservative amendment here.

**The Chair:** To subsection 21(2)?

**Mr Jackson:** Yes. We would strike out "3." If it is the printed version and not a newly submitted one, then I believe you would be in order to recognize our amendment.

**The Chair:** All right. I am looking for my copy of that amendment. I am sure it is here somewhere.

**Mr Jackson:** I am amazed I found mine.

**The Chair:** Mr Jackson moves that subsection 21(2) of the bill, as reprinted to show the amendment proposed by the minister, be amended by striking out "3" in the fifth line and substituting "5."

Do you have an explanation for the amendment?

**Mr Jackson:** It probably would take over an hour, but I think the numbers speak for themselves.

**The Chair:** Further questions or comments to Mr Jackson's amendment?

**Mr Jackson:** Can I take a recorded vote on this, please?

**The Chair:** I can, if I am asked. Ms Poole?

**Ms Poole:** Just for clarification, under subsection 21(2), the Tory amendment, what you are basically doing is saying the cap should be 5%.

**Mr Jackson:** That is correct.

**Ms Poole:** Rather than 3%.

**Mr Jackson:** It would change from 3% to 5%. That is what it would move to.

**Ms Poole:** Could we perhaps have comments from the minister on this particular amendment?

**Hon Ms Gigantes:** We have proposed a 3% cap because we believe that provides enough protection for tenants who will be obliged to pay rent increases. On the other hand, the calculations we have done indicate that a 3% cap would provide enough capital, given the proposal also in this legislation for a three-year roll-through, or one year plus two extra years of roll-through for a landlord who is making application for a major capital renovation, and further, that the amount of capital that could be generated, were it necessary under this proposal over any extended period of time, would be sufficient for landlords as a whole in Ontario to undertake the works they might need to do on their buildings.

Five per cent would be too rich in terms of the amount of burden it would place on tenants, because we are talking here about the guideline plus 5% in legislation, which also provides an extra two years' roll-through. Further, we feel the 3% is adequate for the needs of landlords.

**Ms Poole:** There has been a lot of debate in committee as to what would be the most appropriate cap once the government had signified that it was going ahead with the notion of a cap. We certainly had much testimony that stated that a 3% increase per year, in many landlords' opinions, would not be sufficient to do the capital work, particularly with the government's original proposal that there only be one year carry-forward for large buildings and two years carry-forward for small buildings.

So there appeared to be a problem with how to deal with this. There are basically two options. One option is to increase the cap so that the repairs could be sort of front-end loaded in a short period of time. The other option, which is the one the Liberal caucus has chosen, is to extend the carry-forward so that tenants would have a more phased-out way in which to pay for these improvements. I do not think there is any doubt that there are many capital repairs that need to be done. The government has accepted at least a version of cost pass-through. What is at debate right here is how to ensure that those capital repairs get done, and a sufficient quantity of them, and at the same time protect tenants.

Later on, in subsection 21(5), the Liberal caucus has an amendment which will extend the carry-forward period. In other words, instead of what the government has proposed

right now, for there to be only two years of carry-forward, in certain circumstances the Liberal caucus has said there should be a further carry-forward, for instance in substantial concrete restoration, which we discussed yesterday. It is a very expensive proposal which we want to ensure happens or else our buildings will be in jeopardy. So we have proposed, for instance, for concrete restoration, that it have a longer carry-forward. There would still be a 3% cap, but a longer carry-forward.

It is the same for older building stock, which is much more expensive to do repairs in, and certainly we have had expert testimony in that regard. While we can appreciate the intent of the Conservatives in trying to extend the limit of the cap, the Liberal caucus felt that the best way to accomplish this, protect tenants, and at the same time ensure there was sufficient money there to get the work done would be to extend the carry-forward period, as opposed to extending the amount of the cap. With regret, I have to say to Mr Jackson that the Liberal caucus will not be supporting his amendment to subsection 21(2).

1020

**Mr Jackson:** I appreciate the comments of Mrs Poole, and I agree with her that there are two ways of approaching this, but the concern I have is that in either circumstance the tenant will end up paying. However, we have the issue of whether or not capital improvement will actually occur, whether or not we are being honest with the tenant about the real cost of those.

It strikes me that if I am a tenant and I know I need certain capital works done to my building, and they are going to be done almost immediately and part of those costs will flow because the cap is moved, I can therefore budget or plan to move. Under an extended pay-through period, it would appear that a tenant would not realize the full extent until several years later and therefore the option of mobility—in retrospect, they should have moved, but they did not.

There is no question that there is so much pent-up capital work since most capital work in this province has been halted, or reduced dramatically would be a more appropriate way of putting it, as a result of the uncertainty of the government's approach and the legislation generally. So nowhere are we dealing with the issue of ensuring that a sufficient amount of capital work that is necessary is undertaken, and I think it would be more responsible if we moved the cap in a subsequent period, but not necessarily start out where there is no real incentive to get on with what really amounts to some necessary work in these buildings.

I cannot disagree that it is an alternative approach which the Liberals are proposing, and if this one fails, then I will undoubtedly be supporting theirs.

**Hon Ms Gigantes:** I would just like to note for members of the committee that when we are talking about major capital works, which is what the focus is here at the moment, over the last few years, under Bill 51, as members will recognize, there really was no inhibition about applications for such projects. Be it under the Conservative government, the Liberal government—they will build up experience, I guess, as we go under Bill 121—but certainly

over the last 15 years there has never been a time when landlords have applied for—I have commonly used the figure of more than \$200 million a year above guideline for capital renovations. In fact, the figure is lower than that. It is around \$122 million. It has been the height, and there is no doubt that under this legislation the provisions we have made will easily permit that kind of capital to flow with above-guideline increases. There just is no doubt at all about the overall picture.

It may be the case that there will be unusual cases. One has to ask how they arose and whether we make law for unusual cases. I think, however, members should feel assured that the 3% cap will provide the flexibility, the moving room, for landlords in almost all cases to be able to undertake their work in an orderly way, in which rents will rise to the cap maybe one year, maybe two years, maybe three years, and will provide them with the money they need to undertake those renovations.

**Ms Poole:** In relation to some of the comments just made by the minister, when she says there has not been a year when there has been more than \$200 million, I am sure the minister is aware there was certainly a large time lag because of the great backlog at rent review, caused primarily by the fact that when the legislation came in you had a lot of buildings backed up to get in to make their applications, but secondarily because of bringing in the rent registry at the same time. It was certainly a tremendous backlog on the system. So there was a time lag in there when the applications were not going through rent review in a timely way, and it is only in the last two years that has started to catch up.

I would first of all say to the minister that I do not think we have seen a very true rendition of how much capital has gone through in any particular year, because of the backlog and because of the fact that it took several years for the system to get going.

The second point I would make to the minister is that I was very disappointed that the Ministry of Housing did not do an empirical study on the need for renovations, rehabilitations and capital repairs to our aging housing stock. The statistics provided from the ministry are singularly lacking, and it has reached conclusions I think many disagree with.

The city of Toronto did a very major study several years ago which looked just in the city of Toronto and our aging housing stock and the type of money that would have to be put into it in order to rehabilitate it. The city of Toronto, as you know, has a large number of older buildings. Certainly, if you take the city of Toronto's figures as symptomatic of many parts of the province where we have older housing stock, you will find that the ministry's estimates will be on the low side.

There is disagreement in the housing industry over whose figures are correct, but certainly other figures go up to double of what the Ministry of Housing has estimated. So there is some real disagreement whether what the minister has proposed is adequate. I hope that they will look at some method of ensuring that these repairs get done.

If the carry-forward is not adequate and the cap is not adequate, what will happen is that a landlord would only do enough repairs in which he could recoup most of his



money in, say, that two- or three-year period. That would mean the landlord is back in there in another two years doing more repairs and starting a new project in order to start the process over again so he can recoup the amount of the cap for the new projects.

What we want to avoid happening is the scenario where tenants are in a perpetual state of construction because there is not an adequate amount being allowed to the landlords, so that the landlords only do small projects at a time. An underground parking rehabilitation is an excellent example. If a landlord only does the first phase until such time as he has recouped that part of the money, then starts the second phase of it once he can make another application, what you may very well end up having is a state where tenants are in perpetual renovation. I do not think we want that either.

What we are grappling with in this committee is what is the appropriate cap and what is the appropriate carry-forward, and I think the two go hand in hand. If the government is not willing to give on the one, I hope it is willing to reconsider on the other, whichever way it decides to go.

The government has been adamant since the beginning of the Bill 121 hearings that there was going to be a cap and that 3% was the amount it chose as an acceptable cap. They have not varied from that so I am not overly optimistic, Mr Jackson, that they are going to be willing to accept this amendment.

I hope they are right in their estimations. I hope there is going to be enough money there to do these capital repairs and that in fact landlords will do them. But if the number of calls and letters that have come into my office are any indication, the work is not going to get done, and I think that is the last thing anybody on this committee wants to happen.

1030

**Mr Jackson:** Just to respond to the minister's point about her interpretation of capital expenditure statistics: Minister, you must appreciate privately that those statistics are fraught with difficulties. Half of Ontario's rental inventory was not even monitored because it was not even in rent control until 1987, so right off the bat any references you might make to never exceeding a figure—if you were honest with those statistics, that would become known or would come to light and it would be a dramatic demonstration of the fact that buildings less than 10 years old are now running into extensive capital requirements.

The second point, and this is a sore point with me because it is the case I took before the rent review commission, was the ability of a landlord to do capital expenditures that were unforeseen at the time of the purchase. Those were not part of your inventory for purposes of coming up with this statistic. Yet that loophole, if you may wish to call it that, has been closed in this legislation. I do not necessarily disagree with that because the tests—unforeseeable expenditures at the time of purchase and immediate pass-through—those rules were being abused, and I am the first to admit it. We got a 12-point rollback on that point. I respect where you are coming from, and you have made it abundantly clear that you are referring to a

level at which a tenant can tolerate the expenditure. That is fair ball.

But I have to come back to my original point. I am concerned about the inventory in this province and that we are not providing some buffer here; we have got an absolute cap. From what I am seeing, the cost of renovating has gone up extensively, and rather than the "flat line" of expenditures you want, we are seeing the total amount of capital renovation in this province dropping like a stone. As an example, the price of roofing in this province has quadrupled in under 10 years just because of the high concentration of petroleum products in the process of repairing roofs. So when you say that it is flat-lined—which is what you implied; you did not say that—then I assure you, Minister, that we have a rapidly aging inventory that is depreciating at an alarming rate. That benefits no one.

Your government is charged with the responsibility for ensuring that our infrastructure does not decay, whether it is our roads or our sewer lines. Housing inventory is there for the public good also and government has a responsibility as a partner to ensure that it does not degenerate, or does not devalue to the point that the tenants' level of comfort and enjoyment suffers, and that the availability of that inventory on the market is not ultimately put at risk.

If 5% is too high and 3% is too low, then there should be some method of arbitration or intervention where you can look at that. This system lacks that. It is a flat line, a blunt instrument. So I merely wish to say that I wish we had spent more effort to ensure that those buildings that legitimately qualify in the best interests of tenants and the inventory would be able to succeed, because I know there are a lot of buildings that have not really been touched or worked on for a good number of years. Regardless of who is at fault for that happening, the tenants are still living there. That is why I have submitted it. We will all get an opportunity to look at the Liberal approach and the truth is we will ultimately end up with the 3% blunt instrument.

**Hon Ms Gigantes:** I think it is fair to say that we are all concerned—I think members of the opposition recognize this—about the maintenance of the building stock that we have, particularly those buildings that provide affordable rental housing. I also think it is fair to say, as Mr Jackson has said, that there has been a dropoff in renovation. I believe that once we get Bill 121 in place we will see a change in that. I think Mr Jackson would have to agree that what we have seen in terms of renovation over the last year in affordable rental buildings in Ontario has been a pattern created by many causes, not just one.

He has described the pent-up demand. I think there is some justice in that, considering we are moving from one set of legislative rules to another. I regret the time that it is taking. It has been a complex matter. I think we have all worked as hard as we can to get the job done. The sooner we can get it done, the better it is going to be for everybody to operate within rules which I believe are not blunt instruments.

I think there is flexibility within this legislation that will be a benefit to landlords who are looking to finance the work they need to undertake in the buildings for which they are responsible, and that will benefit tenants. I think



the proposal we have put forward here, which, as Ms Poole points out, is a joint proposal and which I have suggested before was a joint proposal, has to do both with the level of the cap and with the number of years of permitted roll-through, on and above guideline increase.

We have not flat-lined costs. We are providing a guideline, much like the guideline that has been used for many, many years in this province, which reflects inflationary costs for the operation of a building, which provides for capital within the guideline. And we are providing an above-guideline flexibility. It is an above-guideline flexibility capped at 3% and it can extend over a three-year period. To my mind, that is pretty flexible.

I also point out to Ms Poole that it is not the case and not accurate to say that the government has not given, as she calls it, on this question. The government started with the position, which had been proposed by many reasonable people around this province, that there should be a different length of roll-through period for smaller apartment buildings as opposed to larger apartment buildings.

It came to the position that there should be a roll-through, not just of one year in addition to the initial year of above-guideline increase, but of two years on top of the initial year for large buildings. That covers many of the buildings about which a lot of the concern has been expressed, those buildings for which large capital works are necessary, and those include roofing jobs and they include underground parking jobs, elevator jobs, balcony jobs. These are the older buildings in the age range of the late 1950s to early 1970s mainly.

1040

Of course, every building is going to need work along the way, but I will say to Mr Jackson that a landlord who did not use provisions available in Bill 51 to undertake work really does not have much excuse. I mean that was—

**Mr Jackson:** In fairness, Minister, with an 18-month—

**Hon Ms Gigantes:** Mr Chair, I would just like to finish my thought on this subject, if I may. I have a couple of other points to make. There was no inhibition on landlords over the last few years to make their applications. Absolutely none. If the work did not get done, it was not because there was not legislative room for it; there was some other factor involved, and whatever it may have done, that is not a good reason for us now to be saying there are buildings that are about to crumble. There may be some buildings that are in very bad shape and they may need different kinds of measures to affect them, but to write the legislation for them is a mistake, in my view. I do not think we should let those exceptions, and there will be some exceptions, write the law. That is not fair and it is not workable in our society at this point in time.

**Mr Jackson:** Then why are you proceeding with pay equity? It is the same principle.

**Hon Ms Gigantes:** May I also say, as Ms Poole has suggested, and in fact so has Mr Jackson, that the statistics are questionable for these reasons and those reasons. Mr Chair, we have had now enough experience under Bill 51 so that the system has been flushed through in terms of applications through to rent increases, and it has been

flushed through more than one year in absolute terms. We are still getting the same kinds of figures in terms of applications for capital renovations. Given that there was no inhibition on landlords under Bill 51 and still we live with the results, the fact that they should have come in so much below all the claims that we hear from time to time about the billions of dollars that might be required over a two- or three-year period—there is a lot of work to be done, but we certainly have not seen evidence that where it was most needed it was getting done, because we have some buildings which are exceptions, in my view, which are in bad state. Otherwise, the work that needed to get done was getting done and it was getting done by landlords who made above-guideline applications to the amount of \$122 million maximum in a given year. Those are recent statistics. If I were using old statistics you would question that. These are recent statistics.

I think we all understand that there is a balance to be achieved here. We all understand that we have to get a fit between a guideline increase, an above-guideline increase, what the cap on the above-guideline increase should be and the number of years on which, for any particular renovation, a landlord can expect to get an above-guideline increase that will be rolled through for up to the all-inclusive three years. To me that is a good balance: 3% plus three years total on a given application is a good balance. There will be some exceptions. We have always granted that there will be some exceptions. We are not going to write the law for those exceptions at all. We are going to provide what experience tells us will be good flexibility and reasonable capital flow-through for landlords once they justify the capital renovations they are undertaking.

**The Chair:** I have Ms Poole and Ms Poole.

**Ms Poole:** Oh, I get to speak twice. I was not sure you saw me the first time, so I think we can take this as one time on the list. Mr Chair, the minister has challenged my assertion that the government has not given on this particular situation of the cap. I would like to challenge the minister in what she has said. She said the government's initial proposal was to treat small buildings and large buildings differently and that this was supported by many people in the province with regards to the carry-over.

I would say to the minister that in all the hearings we held on Bill 121—and I think I was here for every single one of those hearings—we did not have one witness come forward and say it was a good idea to go for a small and big building, so this concept had no support across the province. In fact, the reason the government so-called “gave” and changed its proposal was because people came and said, “This is idiotic.” If you want to talk about new buildings and old buildings, if you want to make a differentiation, they said that was fine, although they thought it was confusing. Most people said, “Let’s go for one situation, not a different situation for small and large buildings.”

To pawn this off as the government changing its mind and giving—it did not give anything. They were forced with their backs against the wall because people said it was idiotic to go with their proposal in its original form. That is not what I call giving. If we are looking at the Tory amendment to



subsection 21(2), which is to change the amount of the cap, and that is the amendment we are discussing right now, the government has not changed from the first day it introduced the legislation when it said the cap was going to be 3%. They have not varied from it regardless of any testimony to the contrary, so I really have a great deal of difficulty with the government saying they have given in this regard. They only retreated where it was absolutely necessary because they looked foolish.

The second thing: The minister said they do not write law for exceptions. We are not talking about exceptions. We are talking about the fact that 70% of the buildings in this province are over 17 years old, so new buildings are the exception, old buildings are the norm. When we are writing legislation, we are writing the legislation primarily for old buildings, and they are the ones that we must ensure are maintained. That is a very compelling reason why we must ensure that the money is there to do these repairs.

As far as landlords being the ones to inflate the estimates of what these repairs would cost, I do not consider the city of Toronto, although it is a very major landlord, to be one that cried like Chicken Little that the sky is falling. I think they are very reputable and they have done a tremendous amount of work in this area. They have said we are going to need astronomical amounts of money to make sure all our buildings are kept in a state of repair.

We may agree to disagree on what the bottom line is as far as the amount in billions of dollars that needs to be put into our buildings over the next decade, but I can tell you that it is the job of this committee to ensure that whatever cap we set, whatever carry-forwards we set, they be adequate to make sure that those repairs take place.

You just cannot write it off by saying these buildings which need more repairs than the 3% cap will tolerate our exceptions. Many of those buildings are the actual norm because they are older buildings. I think two thirds of the buildings were built previous to 1960, so they are then, what, 32 years old. Those are the buildings we are very concerned about, that they have an adequate amount of money put into them to ensure the repairs get done.

If the government wishes to stand by its 3% cap, if it has decided that this is the most that tenants' rents can tolerate—and I can appreciate that point of view, and I am concerned that we make sure these things are phased in and not in big lump sums which tenants cannot afford in any one given year—then perhaps the alternative that the minister should consider is to revisit the carry-forward, particularly for exceptional circumstances such as underground parking rehabilitation and our older housing stock and make special circumstances for them—not because they are an exception, because they are going to be in the majority. We have to make sure they are taken care of.

**The Chair:** Thank you, Ms Poole. We have Mr White and Mr Mammoliti.

1050

**Mr White:** I was struck by some of the phraseology Ms Poole utilized. The phrase "forced with our backs against the wall to give in and retreat" is certainly a mild variation from "receive" and "dialogue" and "consultation,"

when, after all, we explore an issue and we fine-tune legislation so that it is more workable and more equitable. This is supposedly some retreat from some bastion of ideological purity? I think it is more evidence, as the minister indicated in her presentation, of how responsive a government we have. We do not ram through legislation on the basis that this is where we want to be.

As for the issue of the cap, we have discussed in the past the concerns around neglect. Yes, the issue of maintenance is very keen in this coming decade. They will be some of the most important issues around tenancy and property ownership. If you increase the cap, there is a major danger, I would suggest, of indirectly penalizing the landlords who have been conscientious, responsible stewards of their buildings in favour of those people who have been neglectful and abusive of those buildings. I certainly do not think we want to create two classes of landlords and effectively encourage neglect and degradation of people's living space so that people can utilize an exaggerated cap.

The provision for maintenance costs, I would suggest, is a means that offers some security to tenants. The further we raise those caps, the less comprehensible they are to tenants and the more punitive they can be. I think they are at this point reasonable. I think the whole issue of stewardship is important. If a building is poorly maintained, is that reason to extend the cap so that those additional costs can be borne by tenants for the neglect of the owner of that building? I think not. I think most landlords are responsible. Where the maintenance costs and where the capital improvements are not caused by neglect, that is probably, as you suggest, an exception. But that should not be the exception around which a law is made.

Again, I am struck with this kind of language—"retreat, devastation, backs against the wall"—when all we are doing is maintaining the very purpose of our government, which is to provide a full consultation hearing in all parts of the province and not simply on one part of the issue: the landlords.

**Mr Mammoliti:** I, too, would like to respond to a couple of things Ms Poole has said in relation to Bill 121.

**The Chair:** More particular, to this clause.

**Mr Mammoliti:** And to the clause. When she said that we put our backs up against the wall, that cannot be further from the truth. She is absolutely incredible. I do not think she can remember the election in 1990. One of the reasons the Liberals were defeated in 1990 was because of the consultation process they really did not care about. It was because they were too autocratic. That is the reason they lost. Now she has the audacity to sit in committee and continually repeat the same thing: "retreat," "backs up against the wall." I can only say that if we did not change our minds and if we did not consult, then we would hear the opposite at this point from her, that is, that we are not consulting.

Make up your minds. What argument do you want to give us? This is just continuing and I cannot handle it. I cannot handle it. I am about to lose my temper, Mr Chair.

**Hon Ms Gigantes:** Oh, no.

**Ms Poole:** Mr Chair, protect me, protect me.

**Mr Jackson:** I was hoping we would put that to a vote.



**Mr Mammoliti:** Mr Chair, in relation to the 3% cap, Ms Poole certainly is right when she says a lot of landlords have come in front of the committee and said it is too little. But what she neglects to say and what is very consistent is the fact that she refrains, herself, from saying that the tenants have come out and said that it is too much and that there should be a 0% cap.

So in all fairness, Ms Poole, through you of course, Mr Chair, you should be putting in Hansard, on record, both sides of the story, not just the one. We have chosen the 3% because we believe it is a fair cap. We believe it is a fair amount and we believe it is enough to get the work done in most particular buildings.

I would like to see, a year after the bill has gone through, the amount of work that has been done, the amount of work that maybe could not have been done because landlords could not afford it, and then take a look at the bill and see whether or not we should be making amendments. I am looking forward to that. I certainly have given input; the minister can vouch for this as well. I have certainly had a voice and I have certainly had an opinion on all of this. I am going to continue voicing my opinion even after the bill has gone through, and if I find flaws and if I feel that amendments should be made, I will be suggesting that, and in particular this one. If we need more, and if the landlords need more, if they can prove they need more, then certainly I would recommend it later on down the road. But I think the 3% is fair. Thank you, Mr Chair.

**The Chair:** Thank you, Mr Mammoliti. Ms Poole.

**Ms Poole:** Mr Chair, obviously I struck a sore point with several members of the NDP government over there today. Let's address their points in turn. First, Mr White has said, no, no, of course they did not have their backs against the wall; this was evidence of how responsive a government can be. Through you, Mr Chair, I would put to Mr White that this is evidence of how a government can try to recoup from a major mistake, because what it did when it put this in the original legislation, that it be done by small and large buildings, was show its ignorance of the housing industry. That is what it was. It cannot be excused as anything less.

People who came before this committee were just absolutely appalled that the government could even think this was a reasonable way to deal with it, by small and large buildings. The government did not seem to even appreciate that it was not the size, that it was the age of the building and the state of the building that counted when you are looking at the need for repairs. That is something that to every person on the street would actually be quite obvious.

Then very early on the government made statements such as, "It's obvious that it costs more to run a small building than a big building." I am talking here about operating costs. If you are talking about operating costs as opposed to capital costs, then in fact the reverse is true, because one of the most expensive items in operating a building happens to be the elevators, which you do not have in buildings that have under seven units. Certainly the testimony that came forward showed very clearly that the operating costs, if you were to consider those, were actually

smaller in a small building than they were in a large building: Normally you did not have a superintendent; as I mentioned, you did not have elevator costs, that type of thing.

That is what really appalled me about this, not that the government changed its mind on something. Governments are free to change their minds and in some cases it is actually a very healthy thing. What appalled me was the level of ignorance about the housing industry and that they would make such an assertion to begin with, because it did show that they did not know how buildings were run and they did not know what the housing market was all about. That is why when they use words like "dialogue" and "consultation" it sounds great, but it is useless unless you listen.

1100

I would like to hear the word "listen" in there as well as "consultation." If it is all on paper, if it is meaningless because you have already got your mind made up and you are really not going to change it, then why not save the money and just go ahead and autocratically decide what you want to do?

They continue to persist in terms such as, "We're rewarding the neglectful and abusive landlord." I do not know how many times I have said in this committee that buildings age. No matter how well you try to keep up the maintenance on them, there is a natural aging process when things give out. Is it neglectful that the windows are not replaced, that they are 30 years old and that they are single-paned and letting in the cold air? Is it abusive? My opinion might differ very dramatically from Mr White's or Mr Mammoliti's.

A lot depends too on how much cash flow landlords have and whether they can actually afford to do these windows. We consistently hear mixed messages from the members of the government. When they were in opposition, we constantly heard about how terrible all these horrendous rent increases were and how everybody was abusing the system.

**The Chair:** Perhaps we could speak more directly to Mr Jackson's amendment.

**Ms Poole:** Mr Jackson, was I straying too far from your amendment? I apologize to you.

**Mr Jackson:** I think the point you are making is that it is difficult for all government members to move from rhetoric to reality. If that is your point I think it has been made and we could perhaps move on. But you did make it very well.

**Ms Poole:** Thank you, Mr Jackson. Mr Chair, he is indeed right. That is the bottom line of what I was saying. Governments sometimes find it difficult to move from rhetoric to reality and this government in particular has had an incredible difficulty in doing that.

Then we get to Mr Mammoliti's comments. I do not know where to start, George. First of all, I would like to thank Mr Mammoliti for his glowing endorsement that I shall have on my next brochure that an NDP member said, "Ms Poole, you are absolutely incredible." I thank you for that endorsement.

**The Chair:** Subsection 21(2), Ms Poole.



**Ms Poole:** Back to the Conservative amendment. Mr Mammoliti has suggested that there be a one-year period of review after the legislation goes into force, at which time we would take a second look at it and see whether it is working. I would most wholeheartedly support Mr Mammoliti in this.

**Mr Mammoliti:** On a point of privilege, Mr Chair: I think Hansard will verify that I did not suggest that there be a review; I said that I perhaps would review it. There is a difference, Ms Poole.

**Ms Poole:** Mr Chair, I am really glad Mr Mammoliti made that clarification. I did not know that by reviewing the legislation, Mr Mammoliti indeed had the power to make the kinds of changes he is talking about. Perhaps it does put a different picture on it. I am sure that if at some stage in these hearings I made a motion that we have a one-year period of review, under the circumstances Mr Mammoliti would be most delighted to support that.

**Mr Mammoliti:** Hey, you never know.

**Ms Poole:** He is being nice. Mr Chair, it all comes down to a different perspective on this legislation and what it is supposed to accomplish. All the dialogue and all the consultation in the world will not change the facts. What we will do is that we will have another three years, when this government will have an opportunity to see whether it has indeed allowed enough leeway for capital repairs to be done. In the final analysis, the voters will make the decision on whether they have or have not. Just remember, guys, you heard it hear first.

**The Chair:** Thank you, Ms Poole. Further questions and comments to Mr Jackson's amendment to subsection 21(2)? Shall Mr Jackson's amendment to subsection 21(2) carry?

The committee divided on Mr Jackson's motion, which was negated on the following vote:

#### Ayes—2

Jackson, Marland.

#### Nays—8

Fletcher, Gigantes, Mammoliti, Morin, Owens, Poole, Ward, White.

**The Chair:** Are there further questions, comments on the government amendment to subsection 21(2)? Shall subsection 21(2), as printed, carry?

**Mr Jackson:** We have a further amendment to subsection 21(2).

**The Chair:** A further amendment, Mr Jackson?

**Mr Jackson:** When you said the complete section, that threw me off. Subsection 21(2) is what we are voting on, and I have a new subsection 21(2.1).

**The Chair:** That subsection would come after this, Mr Jackson.

**Mr Jackson:** I know. You just said, "Shall the complete section carry?" That threw me off. I apologize.

**The Chair:** Shall subsection 21(2), as printed, carry? Carried.

Mrs Marland moves that section 21 of the bill be amended by adding the following subsection:

"(2.1) The rent officer may order a maximum rent in an amount greater than that permitted by subsection (2) if 75 per cent of the tenants whose rent would be affected by that expenditure consented to it in writing at the time of contracting for it or if that greater amount is in respect of a capital expenditure that maintains the structural integrity of the building including, but not limited to, an expenditure,

"(a) to repair or replace delaminated concrete and steel in an underground parking garage;

"(b) to replace a roof;

"(c) to convert from galvanized to copper plumbing;

"(d) to replace a boiler;

"(e) to make a repair or improvement to promote the safety of persons;

"(f) to provide access for persons with disabilities;

"(g) to increase energy conservation; or

"(h) to comply with municipal or provincial safety standards."

Mrs Marland, do you have an explanation for your amendment?

**Mrs Marland:** Yes, I do.

**The Chair:** Is it as succinct as Mr Jackson's?

**Mrs Marland:** Oh, we have got a standard set here now, have we?

**The Chair:** I was just teasing, Mrs Marland.

**Mrs Marland:** This provides for a democracy clause in which, if 75% of the tenants approve of the above-listed repairs, the repairs are exempt from the 3% cap. This allows the landlord to undertake major projects with no fear of not being able to regain the cost of those projects.

I think we got into a similar argument last week on another clause, where we were asking for the right of 75% of the tenants to be heard. I think that is when I upset Mr Owens. I think he worried about it all weekend and came in and got the reply yesterday morning.

1110

**Mr Owens:** Do not be so presumptuous.

**Mr Jackson:** You have sleepless nights for other reasons.

**Mrs Marland:** I am sorry; I should have referred to him by his riding, Mr Chairman: Scarborough-Ellesmere.

**Mr Owens:** Scarborough Centre.

**Mr Jackson:** That is the Speaker's riding.

**Mrs Marland:** Sorry, Scarborough Centre. That is right. Anyway, I will try not to unsettle the bears opposite too much, Mr Chairman.

**Mr Owens:** Tease the bears.

**Mrs Marland:** "Tease the bears" is the Treasurer's line.

**Mr Jackson:** You are already a backbencher. You do not need more teasing.

**Mrs Marland:** I do not think anything works better than a democracy.

**Mr White:** That is not what you were saying on Thursday, Margaret.

**Mrs Marland:** I think a democracy, which I would humbly and respectfully suggest that the six NDP members who are present in this room support, is one where



51% can be a fair democracy in their opinion. Those of them who believe in the right to unionize workplaces support a philosophy, and I think that under another piece of legislation that will eventually come before the House in the labour law reforms act. We may well see a proposal where 51% of the workforce in any workplace can vote to unionize that workplace.

We are simply saying in this amendment that we believe 75% of people living in a rental accommodation should be able to have the opportunity in writing to express if they would like to support some major work that has to be done in their building that cannot be funded through a 3% cap on the rental increase.

It does not take a lot of common sense to understand how far you can go with a 3% rent increase to a building in the cost of replacing a roof or in fact even in replacing a boiler or repairing or replacing concrete and steel in an underground garage. These are major, major capital expenditures, and I think everyone in this room understands that. Where rents have been held down and controlled for the number of years that they have, I think the ability of that property owner to put aside money into a fund each year that may have been established for these major projects has really been diminished through rent controls over the last 17 years.

The margin of increase that a lot of property owners have been permitted in the last 17 years in many instances has been less than inflation. Where they have been receiving a certain income from rents and where the costs of operating their buildings have been, with inflation, above the rental increases they have been allowed, the owners simply have not been in a position to accumulate money to meet these major expenditures that are listed in this amendment. If this is a government that truly believes in its policies throughout and the rights of people through democratic vote, I am sure it would want to extend that democracy to people who rent accommodation, for the most part often not by choice but by necessity, because it is impossible for them to get into home ownership.

When you look at some of the areas that are identified in our amendment, I think it is fair also to challenge the government on its support of this amendment in the energy conservation area. This is a government, I would think, that is environmentally conscious. Through their Minister of the Environment, they certainly speak all the time about conserving and protecting the environment, promotion of the 3Rs. Their Minister of Energy certainly speaks at length about energy conservation. He even imports light-bulbs from Quebec to make the point, which is not well made when he imports a product from outside the province. However, energy conservation is one of the items that we have included in this amendment because our caucus firmly believes that, where possible—

**Mr White:** Isn't there a GE factory in your riding?

**Mrs Marland:** Pardon?

**Mr Mammoliti:** Don't you like Quebec, Margaret?

**Mrs Marland:** We believe that every industry and every commercial venture, office building, retail store and other establishments, plus private property, should be

conserving energy where possible. There is a major cost to that, which I am sure the members opposite understand, that where you have to replace inefficient heating units with new units or more efficient fuel or where you have to replace windows because of the heat loss through those windows, or conversely the cooling loss in the summer through the heat coming in through the windows—it is just basic common sense to conserve energy through any measure that is possible. Wherever those measures would be taken in rental accommodation that is addressed by this bill, it obviously is going to be above the normal expense capability of the property owner.

We are simply saying in this amendment that if you really believe in some of these areas, then you would have to support this amendment to make those beliefs a reality. We are simply saying that if you really believe in improving accessibility for people with disabilities, it really means more than an exterior ramp into that building, it means making the laundry rooms totally accessible, for example, it means making any access to recreational areas totally accessible within those buildings.

Bear in mind that when you look at the age of our rental housing stock in Ontario today, the majority of it was built prior to the requirements, by legislation, to provide access for the disabled. Would you not think that now, if this government cared about the disabled, it would want to make those kinds of changes available to the people who live in these older buildings, who do not have the benefit of accessibility, who still face major physical barriers when they try to get into those buildings or move around inside those buildings?

1120

In dealing with the kinds of costs we are looking at when we talk about providing access to persons with disabilities, if the people in that building choose, in the majority of 75% of them, as this amendment says, to make those buildings more functional for people with disabilities, then why would this Ontario socialist government not want to see that happen?

I am optimistic again that the government may support this amendment I am placing, and I hope that if it supports it, as it did one of my amendments last week, we will not then be hit over the head with the big mallet that says, "Ho, ha, but that doesn't mean anything, because we're going to reverse when we get you back into the House and we're going to change it in the committee of the whole." I am hoping that when they support it this morning, it will be there truly supported, in view of supporting a democratic vote, and as a demonstration that this government believes in accessibility for people with disabilities as a right and is realistic enough to know that, for the most part, the majority of landlords simply could not make those kinds of renovations to eliminate barriers to people with disabilities; I am talking about the interior of buildings, not just a ramp up to the main exit or through a garage entrance.

When you look at how much we take for granted as able-bodied people who function very easily in any physical environment, it really is deplorable that we would not be allowing a property owner to make a capital expenditure to



enable his building to be a more comfortable living environment for those people with disabilities. We are simply saying that those kinds of renovations and repairs should be exempt from the 3% cap. We are not saying to allow any property owner to go hog wild and spend money on—I mean, we always hear about the marble foyers and we hear about the microwave ovens and the new appliances. We always hear that junk about what it is landlords do to “qualify” for above-guideline rent increases.

**Mr Owens:** Are you saying it does not happen?

**Mrs Marland:** That is not what this motion is about. This motion has listed as examples—it says “not limited to” as an expenditure, but it is with—one, two—eight examples.

**Mr Mammoliti:** You should have numbered them.

**Mrs Marland:** The problem is that I have lost my glasses, Mr Mammoliti, and you should have respect for someone who is 57 who has now come to the point of needing glasses.

**Mr Mammoliti:** You do not look 57.

**Mrs Marland:** In this light, when I glance down vertically on to this page—

**Mr Jackson:** You did not bring your glasses either, eh? I could not resist that. I am sorry, Margaret. She knows I love her, but—

**The Chair:** You may continue, Mrs Marland.

**Ms Poole:** On a point of order, Mr Chair: I notice Mrs Marland did not make this confession on television last week.

**Mrs Marland:** I did. As a matter of fact, I did talk about them last week, but last week I had them and I said something about, “Just a moment, I have to check,” and I put my glasses on. No, I am not vain about it—

**Ms Poole:** I was referring to the age, not the glasses.

**Mrs Marland:** —it is just that I cannot find them. I am not at all vain about it, but I have to admit when I glance down, and the light in this room is—

Interjections.

**Mrs Marland:** Anyway, the point is that, yes, there are eight examples here, and I think these examples are very clear. I do not think it is at all difficult to understand from the kinds of examples we are giving that they are not minor categories, nor are they in the category of “frills.” I do not think there is anything in these eight examples that is questionable as to the necessity or the practicality of that kind of repair or renovation being made.

Also, in this list there is not an example that is inexpensive. For most of those categories, there is not an example where you are talking about a minor investment. They are major investments; they are major expenditures. The last one is “to comply with municipal or provincial safety standards.” I think yesterday I gave you an example about the height of balcony railings. That was changed in the Ontario Building Code. It has been changed in my lifetime in politics. I cannot remember what year it was, but I have been in politics 18 years.

The thing is that nothing in safety standards is necessarily ever stationary. That is a good thing, because what that is saying is that where research and development is

done, sometimes very serious recommendations are brought forward to elevate safety standards. I know all of you are supportive of safety standards in the workplace, so I am sure you are supportive of improved safety standards where people live, and you would know as well as anyone else that very often those safety standard improvements also are major expenditures. We are simply saying to you through this motion that surely you would not want a 3% cap on expenditures within reason to prohibit that building having a safety standard improvement in it.

I am sure that if you look at each of these items, particularly those that involve safety standards, as under (h); “improvement to promote the safety of persons,” as under (e); the “access for persons with disabilities” under (f); and I am sure if you have any experience with underground parking garages, you know that there can be a very real hazard also, I do not think you would want anyone in any environment to be living at risk because none of these things had been affordable because of the 3% cap. In this case, we are simply saying that if the landlord is willing to do that work and is willing to spend the money, would you be willing, if 75% of the tenants were in agreement, to allow that work to be done?

**The Chair:** Thank you, Mrs Marland. I have Mr Owens, Ms Poole and Mr Mammoliti on my list.

**Mr Owens:** I would like to begin by asking the minister or ministry staff, in terms of the access issue, is there not funding available through the Ministry of Citizenship, or is that simply for access ramps? How does that work for apartment buildings?

**Hon Ms Gigantes:** I know of no funding available through Citizenship for access to private buildings. Certainly for public buildings one can make application for assistance. When it comes to private buildings, there is a program run through the Ministry of Housing known as the Ontario home renewal program for disabled persons. As you know, it has had limited funds over the last few years, not enough to meet demand. Most of the demand has come from people living in their own homes who would like to modify their homes.

**Mr Owens:** Just a further question on that point: Do we have any sense of the numbers of landlords who have actually approached the ministry with respect to obtaining assistance in developing units or access for persons with disabilities, in privately owned buildings?

1130

**Ms Parrish:** Since we do not have a specific program, people are not sort of actively applying for this. You do get some cases where a landlord has made an application under the low-rise rehabilitation program and they will put in ramps at that time.

Most of the cases where we do these kinds of renovations are under our non-profit programs where we have requirements of 5% or 10% of the units being accessible to disabled persons, but there is no private program right now. This statute in section 15 where it sets out what capital repairs you can make as a landlord for this 3% specifically includes access for disabled persons as a ground for which a landlord can apply to increase rents above guideline.



**Mr Owens:** Right. To the amendment from the third party presented by Mrs Marland, she is quite correct in saying we discussed this issue of tenant democracy last week. It still eludes me as to why the member wants to make comparisons between our proposed labour relations amendments and this legislation.

**Mr Jackson:** Do not worry, it will be by secret ballot.

**Mr Owens:** I gave you your chance to speak. Now let me have mine.

The issue is around democracy. Buildings are clearly different from what one would experience in the workplace and I do not think this amendment to subsection 21(2.1) addresses that. When you look at a vote being taken on the shop floor as to whether one wants to join a union or not, it is not the same as having some motion or vote taken as to whether someone can do repairs which in effect are going to end up raising the rents.

We have Elinor Mahoney here today from the Parkdale legal clinic and if we were in the hearings process, I would ask Ms Mahoney questions around the issue of economic evictions that have taken place. It is rather unfortunate that the member for Parkdale is not here. He made his comments about tenant democracy in an apartment building that he and the former Premier visited in Italy, but neglected to reflect on some of the buildings in his own riding, where there has been one particular landlord who is absolutely notorious for his tactics in the neglect of his buildings.

I asked the member of the third party, "When faced with situations like that, how, in effect, would you see tenant democracy working?" It would not work. I encourage the members of the third party to get behind our proposals around building cooperatives in order to ensure full tenant democracy to ensure that all tenants have a say in their housing charges where this kind of coercion that seemed to spark some debate last week would not take place.

Again, I ask the question through the Chair and of course in a rhetorical manner, what do you do with the people who cannot afford the increased rental charges if this amendment was passed and the landlord somehow miraculously got his 75%? What would you do with the people who could not afford to stay in these places? As a person who lives in a riding that has a tenant percentage of approximately 46%, it would be a horrendous process to try and find accommodation for these tenants.

The other issue that we discussed last week, and it rears its head again, is the issue of how one monitors the voting processes every time the landlord would like to make a repair. How does one ensure that those votes are run democratically, as the member seems to want to embrace? How does one ensure that the ballots are counted properly? How does one ensure that each and every tenant understands the process of their undertaking? If English is not the first language of the tenant, how does one ensure that one clearly understands the process that is ongoing?

In terms of the section in the proposed amendment to subsection 21(2.1), there is clause (c), which is to convert piping, I gather, galvanized to copper plumbing. Again, a technical question and I am not sure if anyone here can answer it, but is plastic piping not the choice of contractors

these days? So in fact copper plumbing may not be an issue. It is a very expensive process to convert galvanized to copper piping.

I think this point goes to the whole problem with this amendment: Energy conservation issues, plumbing issues and underground garage issues are not things that have developed over the last year and a half. I think the minister quite accurately pointed out that one cannot make laws for exceptions; I believe that was the way it was put. Yes, there are going to be some crisis buildings out there and there are some buildings with problems. My question, once again, put rhetorically through the Chair to the mover of this motion, is, what has happened in the past? What happened to the moneys that were collected from tenants? What happened to the double-digit increases that were granted these landlords? What did these folks do with the money? Why did they not do the repairs?

**Mr Mammoliti:** The landlord said they invested it.

**Mr Owens:** Obviously the member for Yorkview indicates that one landlord said he invested it. If I were an apartment owner, I would certainly invest in the investment I had purchased rather than some other investment vehicle. I guess once again, with respect to the amendment to 21(2.1), the issue of tenant democracy is not a matter that can be dealt with in a manner that is fair to all tenants, that ensures that the process that would be undertaken would benefit the other tenants. To be fair, one is not sure that it would benefit the landlords either.

As I suggested last week and as I have suggested earlier in my remarks, if the members of the third party are so interested in tenant democracy and think the democratic process is the way to go, they should get behind our co-op programs. Perhaps what they would also like to do is to call their federal cousin and ask the Prime Minister to start sending some of the moneys he owes us under the Canada assistance plan so that we can get down and start building more affordable housing and developing more co-ops so that we can see tenant democracy spread across this province.

In closing, again, the analogy that is drawn between the labour relations amendments and these rent review amendments are clearly not appropriate. If a person chooses not to join a union, his or her livelihood is not affected. Should we pass this amendment and increases are granted to these buildings, a person's tenancy may be affected and there may be a greater increase in economic evictions. Just to make another point on that, it is very difficult to track the numbers of economic evictions and I will be very curious to see what the ministry comes back with in terms of that, because people just up and leave. So while tenant democracy sounds like a warm and fuzzy idea, I think it has its place: Its place is in the co-operative movement, and I would urge the members of the third party to support that. Thank you.

1140

**Ms Poole:** I thank Mr Owens for his very thoughtful comments. I think there is some merit to a number of the ones he has talked about. Perhaps I could point out that 75% is quite a stringent test. Sometimes in my riding I figure if I get 75% of tenants to agree to anything I am



doing extremely well. Tenants are individuals; they do not think en masse.

I quite often go visit tenants in their lobbies by the elevators when they are going home from work. Last year I was at 45 Dunfield Avenue and I remember this incident very vividly. They had just received a 7% above-guideline increase and I think the repairs would probably match fairly closely with what has been itemized in this legislation as necessary repairs, so we are not talking about luxury-type things. I must have met 75 to 80 tenants as they were coming home from work and about 15 of them said to me that they were very upset by the rent increase. I talked to them about what it was for, and they did not have any problem with that, they just did not want the rent increase.

Then I had another dozen and a half people who came to me and said they wanted new windows because they were on the west side of the building and there was a really cold draft. They were really upset because Greenwin Properties had not put in new windows. I said: "Well, you realize if Greenwin puts in new windows, you will get a rent increase." They said: "Yes, but we need it done and we are willing to pay for it."

Then I started talking to the other tenants and asking them if they thought they needed new windows. They said: "No, I am on the south side of the building and I am quite protected. I don't need new windows." Sometimes you find that even though you might have a large body of tenants in the building who think one particular way, to get 75% is going to be relatively rare and I think a fairly exceptional circumstance.

One of the things that has concerned tenant leaders in particular about tenant consent is cases where coercion is used.

Interjection.

**Ms Poole:** I see we are getting assistance for Mrs Marland with her glasses at the moment.

**The Chair:** To Mrs Marland's amendment.

**Ms Poole:** To Mrs Marland's amendment. One of the concerns has been that if there is tenant consent, there might be coercion. Again, my experience with tenants is that many of them are not the type to be coerced. They are very independent, free-thinking people who are going to stand up for their own. But there are others who are in danger of coercion. They might be seniors who just want to live peaceably and they really do not want to rock any boats. They might be people who do not speak English very well and therefore do not know what is being required of them and might be somewhat intimidated by the same process, or other people may just be of the nature that they are easily intimidated.

Later on in the legislation, in subsection 45(2), the Liberal caucus has moved an amendment concerning coercion, basically saying that if an agreement has been entered into as a result of coercion or as a result of a false, incomplete or misleading representation by the landlord or an agent of the landlord, then the agreement is not enforceable. It was to take care of this particular problem of ensuring that intimidation and coercion are not used when dealing with tenants.

So that is the first point, that 75% is quite a stringent test and if we also put in other mechanisms to ensure that there is not coercion, then I think it then becomes a fair test.

Another example I would give you would be of two buildings up at Jackes Avenue and Rosehill Avenue. The name of the complex has escaped my mind for the moment, but there are two buildings up there where they actually sat down with their landlord. There were a number of repairs that needed to be done in the building. The tenants' association sat down with their landlord, and they made up an agreement. The agreement on the part of the landlord was that the rent increase would not go above 10%—that was less than 5% above guideline—and on the part of the tenants, they prioritized what they wanted done in the building. It was a very amicable agreement, and the association, the tenants and the landlord made this agreement.

Then at the time of Bill 4 the president of the association appeared before our committee and said that tenants in the buildings were quite upset because they had worked very hard to reach this agreement and they had agreed the work needed to be done, and yet even though they had reached agreement as to what they felt an acceptable rent increase would be, they were not allowed to proceed.

I do not think your average building is going to use this particular clause, particularly because of the stringent test, but you may have situations such as—again, I am sorry to be imprecise; it was either London or Hamilton—a building that had about 60 or 70 units in it. The landlord had done renovations and virtually every tenant in the building signed a petition which they sent to our committee. It was addressed to the Premier, saying, "We feel that the landlord did these repairs in good faith, that they were necessary repairs, and we agree that the rent increase should be paid, and we are willing to pay it." Because they were caught in the Bill 4 freeze, the landlord was not reimbursed for the amount and was in financial jeopardy.

It could be that a building is in financial jeopardy. For instance, if you had something like an underground parking garage repair which was going to be extremely expensive and the landlord could not get financing for it simply because the revenues would not be there to pay off the loan, then the tenants could reach an agreement, or could not, depending on the situation, that it was very important for their own health and safety that this be done. I know in these situations the government has said, "We'll come in with the big stick and there'll be a work order put on and then there'll be a rent decrease. They won't be allowed to get the statutory guideline." But you see, it does not really solve the problem. It does not get the underground parking garage rehabilitated.

In cases like this you are really in a catch-22 situation. You can apply the penalty, but the bottom line is, does the work get done? To allow the tenant consent, 75% in writing, would at least provide a remedy for situations like this. Mr Owens asked some questions about the balloting, the voting. The Conservative caucus members could correct me if I am wrong, but I do not think it was envisaged that it would be balloting. I think subsection 21(2.1) says that 75% of the tenants whose rent would be affected have to consent to it in writing. I know from the Bill 4 hearings at that time



that the Conservative Party was very precise about its wording. They did not say a "petition;" they said "consent in writing," so they actually have to write out that they consent in their own handwriting and sign it. This to a certain extent gets away from a number of the problems Mr Owens was talking about.

Energy conservation, item (g), is very important and I think we all agree that it is a goal we have as a province, and as individual people in Ontario we want to see it done and encouraged. We have a Liberal amendment in 22(2) to help facilitate this. But again, if 75% of the tenants believe energy conservation is a prime goal and want to get the new windows I was talking about or other items which would help effect energy conservation, then who are we to say they should not have that opportunity? You come to a stage where what you envisage as protection may well be protection for some but it may become a barrier for others. That is what you want to avoid.

The Conservative amendment does provide some flexibility and a fairly stringent test for tenants: 75%. You are not going to find this section used very often but it will at least provide that opportunity in cases where the tenants feel very strongly on a particular issue and would like it dealt with, so the Liberal caucus will be supporting Mrs Marland's amendment.

**The Chair:** Thank you, Ms Poole. Mr Mammoliti.

**Mr Mammoliti:** Regarding some of the remarks Mrs Marland made earlier, I am wondering whether we have converted her into a unionist. If we have, then I am proud of her, and I am proud of us, for that matter.

**Mrs Marland:** Just call me "sister."

1150

**Mr Mammoliti:** I would also like to ask the clerk and some other people in the building to look for a pair of glasses for Mrs Marland. She seems to be wandering and looking for a pair. On a serious note, however, I cannot support this amendment.

**Mrs Marland:** Did the three little pigs wear glasses?

**Mr Mammoliti:** I cannot support this amendment and I will give you a number of reasons why. I am not convinced that if this amendment is passed coercion would not exist. I keep looking at my own riding, that example I have been using day in and day out since we came back and have dealt with clause-by-clause: I am not sure whether he is guilty or not, but a superintendent has been questioned and has been seen apparently with a gun, has shown it around and has been taking shots in the underground garage and that sort of thing. Would that be considered coercion? I would say yes. I know if I were a tenant and my superintendent walked around with a gun I would certainly think twice about saying no to him or her. So that strikes me as a problem.

I will get this over with because I would like to address Ms Poole's future amendment on coercion.

**The Chair:** I think it would be better if we discussed Ms Poole's amendment at the appropriate time.

**Mr Mammoliti:** No, Mr Chair. She related her amendment to this particular amendment and I would just like to say that I for one, on a personal note, would like to

look at that amendment. I have not really studied it. There may be some changes I would like to make to it and suggest, but I certainly would like to look at that myself and see whether I would approve of that amendment.

I just thought I would make you feel good before lunch time, Ms Poole.

Let's talk a little bit, just a little bit, because I do not have much time, about preventive maintenance. Let's look at how many landlords actually practise preventive maintenance. All you members out there who have gone around to the buildings can clearly note when and where a landlord has practised preventive maintenance. How does that relate to the eight items we are talking about now? Let's do this fairly quickly: (a) concrete and steel in the underground parking garages. As you know, salt is a major factor—

**Mr Jackson:** I don't believe you're going to do this again.

**Mr Mammoliti:** I am going to do it, because how many of your landlords wash the walls and the floors, and how many of them sweep their underground garages on a regular basis? If you can honestly say they do it on a regular basis then I may support you on it, because I am willing to bet they do not. I am willing to bet that the staff on site will say they do not go down there and wash those walls and wash those floors and sweep those floors and get rid of the salt that damages the concrete.

**Mr Jackson:** I apologize, Mr Chair. I thought he was still on the stuff he was spouting a year ago about landlords pouring salt in underground and—

**Mr Mammoliti:** He refers to what I said a year ago.

**Mr Jackson:** I would like to apologize to a member, Mr Chair, when I spoke out of turn. The member was ignorant of the facts a year ago, and now—

**The Chair:** Mr Mammoliti has the floor.

**Interjection:** Mr Chair, let him apologize.

**The Chair:** Mr Mammoliti has the floor.

**Mr Mammoliti:** Obviously the member misunderstood what I said a year ago. I am not going to dwell on it. I was referring to the salt that was poured above the garages and the damage it does.

**Mr Jackson:** Come on, it's in Hansard. They call him the rock salt heavy.

**Mr Mammoliti:** Oh, please.

**Mr Jackson:** I cannot believe what you said.

**Mr Owens:** What was that?

**Mr Jackson:** He said they should be using new chemicals.

**The Chair:** Mr Jackson, you are on the list.

**Mr Owens:** A point of clarification.

**The Chair:** Mr Mammoliti, you have the floor.

**Mr Mammoliti:** Perhaps, if the member would like, I would pull him aside afterwards and tell him what I said, and if he thinks it is in Hansard perhaps he can produce it so that we see it.

**Mr Jackson:** Do you have a gun?



**Mr Mammoliti:** I think I got my point across about concrete and preventive maintenance. To replace a roof—let's take a flat roof, for instance, where on a regular basis the flaps have to be checked and gravel and the tar have to be checked pretty much on a weekly basis. I know that when I ran the buildings with Metro housing I had the staff check the roofs on a weekly basis. Those are preventive maintenance tasks that should be done on a regular basis and the money should be spent on a regular basis.

When we talk about repairs to boilers, it is the same thing. How many times do you know, and more specifically to the members across, of your landlords cleaning their boilers on a regular basis? No question, this is a very expensive replacement. Mrs Marland, this item in particular and the rest of them could be very inexpensive when it is time to fix it up and do those capital expenditures if the preventive maintenance were practised.

It is almost 12 o'clock. The point I want to stress again, and I have said it time and time again, is preventive main-

tenance. A question I would like to give all of you as well is, will landlords, the ones who are looking at profit, the ones who want to make that extra buck, neglect their buildings if this clause goes through? Will those landlords neglect the buildings on purpose? Will they say, "I'm not going to do the preventive maintenance repairs because I want it to get so bad that I could take advantage of subsection 21(2.1)"? Will landlords do this? I would say that a lot of them might. Until we are satisfied that landlords will not—Mr Chair, I note that it is 12 o'clock.

**The Chair:** I am sure you would like to continue this this afternoon at 2 o'clock.

**Mrs Marland:** Do not forget where you were.

**The Chair:** The committee will adjourn until 2 o'clock.

The committee recessed at 1159.

## AFTERNOON SITTING

The committee resumed at 1409.

**The Chair:** The standing committee on general government will come to order. We are discussing clause-by-clause of Bill 121. This morning we concluded with Mr Mammoliti speaking to Mrs Marland's amendment to subsection 21(2.1).

**Hon Ms Gigantes:** I wonder if before we pick up the discussion again I could table with the committee members some information on the question of major renovations. These are orders for parking garage expenditures from selected rent review offices under Bill 51. It indicates, certainly to the satisfaction of people in my ministry, that except in a very rare situation—in this case a 12-unit apartment building where a garage renovation was the subject of an application—the guideline-plus-3% cap would provide, with the roll-through we are providing for in this bill, the capital necessary for major renovations. I would be happy to table this with members of the committee now, and if they have questions later, I am sure the staff people would be glad to try to answer.

**The Chair:** Thank you, Minister. I think we will have the clerk circulate this information to all members.

**Mrs Marland:** Can I comment on that, Mr Chairman?

**Mr Jackson:** Ask a question.

**The Chair:** I would be happy to permit that. I was just wondering whether procedurally it would not be wise to give members a chance to review the information before we start to ask questions. Maybe we could pick up the questions following the discussion. However the committee wishes to proceed is fine with me.

**Mrs Marland:** I do not mean to interrupt Mr Mammoliti, but I think the minister, in tabling some information that could be very relevant from one point of view and maybe not relevant from another point of view, has in fact interrupted him. But I am quite happy to save my comments to when the rotation comes around, in response to the material that the minister has tabled.

**The Chair:** Thank you, Mrs Marland. Mr Mammoliti.

**Mr Mammoliti:** I was glancing at the list here, and I am pretty sure the wonderful example I have used pretty much every day at these meetings is a part of this list somewhere. I am going to pay particular attention to it and ask the minister later.

To continue where I left off, as you recall, all of you will note that I spoke a little bit about preventive maintenance and how I felt that some of the landlords out there, even a lot of the landlords, do not necessarily practise preventive maintenance. Because of this, and I gave you a few examples this morning, I find it very hard to support this amendment. There is no need for me to go over what I said this morning. I would like to mention, however, that yesterday and earlier this week I shared with committee a problem I had in my riding in relation to one of the apartments at Weston Road and Finch Avenue, specifically 2397 Finch Avenue West, I believe, where we have been having quite a bit of a problem in terms of slums.

I would be pleased to say that I met with the lawyer representing the landlord recently—yesterday, actually—and he has agreed to sit down and have me mediate an agreement between the tenants and himself. So it is good news. The bad news is that during our conversation I talked with him a little bit about this preventive maintenance and how I felt the building had been neglected. He told me that as far as he was concerned it was not the landlord's responsibility to check fire hoses every day and to check roofs every day and to have the superintendent walk around on each floor and make sure things such as elevator signs are replaced, check common areas, locks, that sort of thing—that he felt going into laundry rooms was not an everyday occurrence and should not be for superintendents.

This is the type of attitude that has to change, Mr Chair. How can I possibly sit here and say I would support this amendment? If this amendment went through, you know exactly what would happen. I talked about it this morning. Landlords such as this one would neglect their buildings on purpose. They would allow the buildings to deteriorate to a point where capital expenditure would have to occur. If this went through, the tenants would have to pay for that capital expenditure again.

Realistically, this is just another form of Bill 51, is it not? In my view it is just another form of Bill 51.

I note that the two members across are talking. I think this is pretty important, something that you should actually listen to, and if you are not listening—

**The Chair:** Mr Mammoliti, if you could address your questions to the Chair.

**Mr Mammoliti:** Well, I get emotional, Mr Chair, when we talk about this, because thousands of tenants out there have been neglected, hundreds of them in my riding. I cannot support this bill, at least until I know that landlords would not neglect their buildings so they would deteriorate to that point. I have not heard anything to convince me otherwise from either the Liberals or the Conservatives at this point, so I would have to say that I am not going to support this amendment. We have to keep an eye on what is going on out there, and I think our bill does that.

I will leave it at that, Mr Chair. Thank you.

**Mr Jackson:** I have given this amendment considerable thought and certainly find it supportable. It has the support of some of the tenants in buildings who have, as a general rule, the most acute concerns about affordability.

During my tenure I have had occasion to participate in organizing tenant groups, in particular in response to social conditions which have degenerated to a point that the quality of life was affecting the children and women who live alone. It is interesting, in that context, how easily people will come together to share their common concerns and how they are prepared, when a problem is identified, to look at all possible solutions.

It is in that context that we have been able to achieve some level of consensus among tenants about the areas for resolution of the conditions that are present in a given



building. I am sure the minister would agree with me that those conditions are not necessarily limited to affordability. They can be as broadly based as quality of life or as specific as safety. They can include noise factors—a whole range of concerns.

If I had not experienced the process where tenants were able to come together, as we were able to do, to participate in a rent review hearing, to win a rollback, to bring the police in on site, as I have done in a case of four buildings which have an incredibly high concentration of disadvantaged and fixed-income tenants—they were able to sit down with municipal staff, the police, the landlord, legal counsel, their MPP, so I completely disagree with the notion that models that follow along these lines are unworkable. I know they do work. Community-based models work. Community-based models that move towards a consensus on important issues about their living environment are, I think, also worthy, so here are a couple of examples that I have lived through which I want to share, which are the genesis of why I believe this amendment is so important.

If the minister would say to me, "I appreciate the principle, but I want to ensure that it isn't an automatic," then I would say that she understands the principle of community-based decision-making to resolve these broader issues other than price but which are affected by price. Here are the two examples: We found we had a high incidence of single-parent mother-led families. We have incredibly acute waiting lists for subsidized day care spaces, because the current fashion—at least it has been for over a year—has been to prefer to develop co-ops and not to expand the grid for subsidies.

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We sat down with this group, and we are talking about a rather large building with a large concentration. There was a case where, according to this resolution, 75% of the tenants could come together and say: "Look, we feel we have a problem with the children in the halls. We have a problem with parents needing time out. We have a problem with parents getting access to life skill programming that we'd like to provide in this environment. We'd like to convert one or two of the common area rooms to those uses so that we can comply with the Day Nurseries Act and a few things like that." We had a ready, willing and able landlord, but who was going to pay for it? Certainly the landlord did not have the money. The rents—it was low income, they had a high turnover. But to the degree that we would be able to schedule over a longer term and amortize the costs of a modified day care centre, it would be helpful.

The other example that came to light—and I will be quick—was women's safety. The Leslie Mahaffy and Nina de Villiers cases in our community have caused our community finally to come to the conclusion that we should be examining all aspects of public safety for women. We are seeing clearly identified with police records those apartment buildings where we have experienced a lot of difficulty. Those renovations and retrofits are not required by law, but are clearly in the context of tenants coming together and agreeing that these are perhaps more worthwhile renovations than, say, painting the balconies for a second time in four years, which we know some landlords will do.

I regret there is more rhetoric flying about whether democracy will work in a tenant environment. I do not wish to get into that debate because frankly I found it awkward in the context of tenants participating in decision-making around their environment. However, I do wish to say that that was the intention of why I was pushing for this amendment. I believe very strongly and I will continue to believe strongly in it, and I see appropriate modifications to buildings which the tenants genuinely and honestly are seeking, and for that reason it has been put forward.

I would ask that the committee entertain a friendly amendment. I believe it is a very valid point that clause 21(2.1)(c) read, "to convert from galvanized plumbing" and delete "to copper." Assuming that we have all accepted that and I present that on Mrs Marland's behalf so it complies with the rules, we would—

**The Chair:** We have a little bit of confusion which I am sure we can clear up quickly. We are speaking to clause 21(2.1)(c) and you wish to delete the words "to copper plumbing."

**Mr Jackson:** A friendly amendment on behalf of the mover to delete the words "to copper."

**Hon Ms Gigantes:** So it will read, "to convert from galvanized to plumbing"?

**Mr Jackson:** No, "from galvanized plumbing."

**Hon Ms Gigantes:** Okay, thank you.

**Mr Mammoliti:** To whatever.

**Mr Jackson:** To whatever. The reason I think that is even more appropriate is I notice the government is poised and ready to spend \$2 billion to assist in the conversion of electrical baseboard heating to gas- and oil-fired forms of heat. Perhaps it is a regret that tenants who realize many of the capital costs through a degree of pass-through are ineligible for the government's generous efforts in this area. Even the language I read in the media reports is that the government will bring in legislation to force Hydro to offer this money. I guess it concerns me that perhaps tenants would like very much to have a piece of the action in this process of being energy efficient and that the landlords of course are barred from this; at least it would appear to be so from the initial press reports.

I think there is a whole area here that is worth looking at in terms of energy efficiency and tenants coming together and saying: "Look, on the one hand, I think we can reduce 60% of our consumption of energy costs if we move in this area, so we'll agree to win on the one side, to lose on the other side." There is no mechanism for that to happen nor is there any incentive, because the incentive plans are strictly for the private sector, according to the government, for freehold home owners and not for tenants in this province.

That is only a current thing that came in today's press release, but it is building on Mr Mammoliti's point that perhaps it is too restrictive to indicate conversion to copper, because galvanized plumbing can imply that that is the heat as well as the water line, and there might be some room there.

That is all I really wanted to say, but I have seen models like this work. I believe they can, and I believe that where it is tenant-based and a consensus—even 85%—the point



is that a clearly defined majority willingly accepts in the best interests of the building and the environment that these renovations be undertaken and be scheduled in a certain fashion. Those are my comments. Thank you.

**The Chair:** Thank you, Mr Jackson. Minister?

**Hon Ms Gigantes:** Mr Chair, I will put aside the temptation, which I must say I do feel, to try and respond to some of the issues that have been raised in the wide-ranging discussion we have just had on this proposed amendment.

Let me draw to the attention of the members this primary fact about the legislation, which is that under section 15, a landlord is permitted to make an application for an above-guideline increase on a number of matters specified in subsection 15(2). I guess that is the main section we are dealing with, section 15. Most of the items which are referred to in the amendment put forward by the Conservative members of this committee are already matters of application available to landlords under subsection 15(2). What the amendment before us proposes is that the cap can be broken. It is not suggesting that the landlord shall be able to apply, because the legislation as printed provides that, and in fact we have passed that section. We have provided, as far as our committee work is concerned, that landlords may apply for a whole list of reasons, again, which are very much like the ones listed in the amendment.

What the amendment says is that the landlord can go above the cap, above the 3%, on these items when there is agreement by 75% of the tenants. Two responses on that, Mr Chair, to put it most simply: First, we have decided there is a 3% cap. It is unsatisfactory to me and it is unsatisfactory to the government to provide loopholes around that. There is a balance of interest in this bill, and in my view it is a necessary part of that balance that we have a 3% cap. We allow that 3% to be broken for no reason. We say there can be above-guideline increases for any particular application by a landlord for up to three years. That, we think, is a good balance.

The second item, about which we have had an enormous amount of discussion, I understand arose mainly out of a discussion on Monday, if I am correct, about democracy in rental accommodation. This is not a question of democracy or non-democracy in rental accommodation. This is not what we are dealing with here. What the Conservatives are suggesting to us is, if the landlord can get 75% of the tenants to agree in writing that the landlord can break the 3% cap for the listed items, then the bill will permit that, and to that we say no. The 3% cap will remain. We are not going to get into the question of petitioning and deciding whether there is legitimacy of written consent on a matter as complex as getting 75% of tenants involved. Good Lord. How much more complication can we devise for rent regulation? I think we may have reached the ultimate here.

In any case, Mr Chair, I think members will understand that the principal problem with the amendment from our point of view is that it provides an escape. It provides for the breaking of that commitment that we have made in the balance we are providing for tenants and landlords, that for

tenants, 3% above guideline on an annual basis is it, and we are not going to accept the Conservative proposal which has as its intent to start providing a route to avoid that cap.

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**The Chair:** Thank you, Minister. Mr Owens, Ms Poole and Mrs Marland.

**Mr Owens:** Thank you, Mr Chair. I would like to begin by addressing Mr Jackson's comments with respect to the issue of safety and the two well-publicized murders of young women in his area, Nina de Villiers and Leslie Mahaffy. I would like to gently suggest to the member that within this legislation there exists a 2% item for capital expenditures that are already included, and that if the landlord were doing his work and maintaining the building—it is not just a “his;” it is a “his” and a “her” as well—the kinds of retrofitting that Mr Jackson is using as a rationale to support the Conservative motion on this issue would simply not be necessary. Sure, security precautions change, and there are different technologies and whatever, but again, the additional 3% would certainly cover the kinds of expenses Mr Jackson would envision under this process.

I was going to make a comment on the remarks that Ms Poole made before our break this morning regarding the issue of ballot versus a written consent. I understand that Ms Poole is normally a sensitive member. While I do not always agree with her conclusions or the analysis by which she reaches those conclusions, I will certainly say that she is normally a sensitive member, which is why I could not quite understand why she would make a comment stating that written consent is a much easier process in light of the remarks that I made with respect to persons with literacy problems and persons whose first language may not necessarily be English. I find that to be passing strange, that written consent is somewhat easier to obtain or to have a person do than simply a ballot process. But anyway, as I say, I think that once the member thinks about it, she will understand that what she was indicating was not something that simplified the process at all. With that, I will conclude my remarks.

**Ms Poole:** This morning, in the course of discussing the Conservative amendment to subsection 21(2), we had a discussion about clause 21(2.1)(a), which dealt with an underground parking garage, and there was some disagreement on the committee exactly what was said with regard to parking garages and whether they were indeed something that could be rectified by ongoing maintenance or whether it was simply a matter of technology of some 20 years ago which has proved deficient through time. I have taken the liberty of obtaining the Hansards over my lunch-hour—I have a strange way of enjoying myself over lunch—so that we could clear the record in this regard. I would like to take several quotes from the Hansards when this matter was discussed, which would certainly put things in perspective.

**Hon Ms Gigantes:** Is this directly related to this matter?

**Ms Poole:** Yes, it is directly related to clause 21(2.1)(a), which deals with repairing an underground parking garage and the significant expense related to it. Mr Mammoliti



had talked about the things landlords could do to improve the situation and where landlords were neglectful.

The first one I would like to quote from is the presentation by the Steeplejack and Masonry Restoration Contractors Association, who presented together with the Operative Plasterers and Cement Masons' International Association and Restoration Steeplejacks Local 172. I asked the question: "Mr Mammoliti was of the strong opinion that with proper maintenance they would not have to be retrofitted and this major work would not have to be done. My understanding is that when these parking garages were done 20, 25 years ago the technology was such that it did not protect against rusting of the reinforcement bars that are in the concrete, and that no matter how many times the landlord waterproofed the sides of the garage or anything else, eventually this corrosion from salt, moisture and everything else would get to the stage where massive expenditures would have to be made," and I asked him to comment on it.

He said that the maintenance issue would be true of new buildings. It is not true of the things that were built 20 to 25 years ago. "One of the big problems is the latency of salts in the structures now that have an ongoing effect." Mr Mammoliti picked up the conversation at this particular point and asked if he could ask a question. He said, "We did have the discussion and I referred to the delay of corrosion and what preventive maintenance could do to delay the corrosion. We brought up waterproofing and that sort of thing. My discussion also touched on the neglect of landlords by perhaps not using calcium as opposed to salt on their driveways to prevent this from happening."

My response was that if people only drove in landlords' driveways and not on city roads perhaps the calcium would indeed be beneficial, but as things are, it is not.

There were a number of things these presenters said which I think are very helpful to our conversation on not only the necessity of the underground parking garage but the expense attributed to it. The same presenters showed pictures to the committee, and they said: "Here is an underground garage that has to be supported because the structural engineer felt it was deficient to the point that it could collapse. This is the underside that shows the type of deterioration of water and salts and stuff eroding through the slab. More examples of the deterioration of the underside of an underground parking garage slab."

"As you can see from the slides, the work we do is not cosmetic. It is of a structural nature, often done under the supervision of a professional engineer. The committee might also be asking: Could these repairs not have been avoided through proper maintenance?" This gets to the heart of what Mr Mammoliti was asking about. "The answer is no. From the mid-1960s to the mid-1970s this province saw a dramatic increase in the number of structures built that were over six storeys in height. Many of these buildings form a large part of our existing affordable housing stock. At the time these buildings were built we were unaware of many of the forces causing these buildings to age and deteriorate. We somehow thought these monolithic structures of modern architecture were impervious to the elements. Unfortunately, they are not."

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"Over the past 25 years, we have gained new knowledge about these forces, how to analyse what is happening," etc, etc. But they made it extremely clear that it was not maintenance that was at question.

Regarding the number and effect of these underground parking garages and the cost, I will quote from the Hansard of Tuesday, February 12 in this committee, the Concrete Restoration Association of Ontario. That particular association quoted from the July 1988 report of the Ministry of Housing, Ontario building branch, on the phenomenon which indicated that more than 3,000 structures are affected. He quoted from the report:

"It is now evident that deterioration of concrete parking garages is occurring due to the rapid corrosion, rusting, of reinforcing steel caused by the progressive accumulation of salt in the concrete. It is now generally accepted that the standards and practices applied"—

**Mr Owens:** On a point of order, Mr Chair: I am just wondering where the member is going with this evidence. Is there a point that is related to the amendment?

**The Chair:** She has been reading extensively, but I think she is speaking to clause 21(2.1)(a), and I would hope that she is going to conclude the reading of Hansard shortly.

**Mr Owens:** I am not quite sure where this is leading in terms of the 75% rule the Conservatives are wanting to bring in.

**Ms Poole:** I would be happy to answer Mr Owens's question.

**The Chair:** Thank you for your comments, Mr Owens.

**Ms Poole:** The reason I am reading from this is, first, I have indicated that Mr Mammoliti's supposition to this committee that it was a matter of a landlord's neglect in maintenance is indeed inaccurate, and second, that the Ministry of Housing estimated in July, 1988 that 3,000 structures are affected, and these organizations estimated that up to 5,000 buildings are now affected.

**Mr Owens:** It still does not go to the point of the motion, though.

**Ms Poole:** Please, Mr Owens. The next part I was going to read states: "The cost of a typical apartment garage repair ranges from \$6 to \$40 per square foot. Thus, for a garage with 150 parking spaces, the cost can vary between"—

**Mr White:** On a point of order: I believe Ms Poole had made her point very succinctly within the first five or 10 minutes of her recitation, and perhaps she can refer us to that document at some later time.

**Mr Jackson:** I am still waiting for her to make her point. Let her make it, okay?

**Ms Poole:** That is right. I have many points to make. I have already spoken to the one point about Mr Mammoliti's argument. The second one, which is very important, is the cost. "The cost of a typical apartment garage repair ranges from \$6 to \$40 per square foot. Thus, for a garage with 150 parking spaces, the cost can vary between \$360,000 to \$2.4 million."

I will say to the members of the government, through you, Mr Chair, that if you think that your 3% cap is going



to touch a \$2.4-million parking garage repair, then I am sorry, it just does not wash.

**Mr Mammoliti:** Wash? That is what they should be doing.

**Ms Poole:** Mr Mammoliti has said they should wash. I have a quote from Hansard regarding that portion which I was not going to read but I now must. It is from the same presentation by the Concrete Restoration Association of Ontario:

"I hope as well that you understand clearly from what I have said that this is not an issue of routine maintenance. No amount of minor maintenance, as opposed to rehabilitation, could deal with this phenomenon. Waterproofing without major restoration only prevents the ingress of more salt and water but does nothing to restore the integrity of the structure."

One final point they made was that when Bill 4 was introduced, "Within days...over 42 major structural concrete restoration projects were cancelled by building owners and managers."

They went on to say that for every month and every year this is delayed, the cost will be significantly higher and it will be a much more difficult project to accomplish.

I think from the experts, not a bunch of MPPs like us who really are not all that well versed in underground parking garages—

**Mr Jackson:** Just a minute.

**Ms Poole:** Some of us are more well versed than others, Mr Jackson, but I do not think any of us can compete with the Concrete Restoration Association of Ontario.

**Mr Jackson:** That I agree with.

**Ms Poole:** Or the Steeplejacks, Local 172. They are indeed the experts.

This makes a number of points, aside from what I said about Mr Mammoliti. It says that it is an extremely expensive proposition and it is absolutely necessary that it be done. It cannot be done through routine maintenance; it has to be done by a major retrofitting.

It also becomes very clear that in many cases the cost cannot be recovered through a 3% cap. It is simply going to be insufficient. In situations where the landlord has had a building for a significant length of time and has a very low mortgage on it, he could certainly use his building as collateral to get a loan in order to effect the repair. What I am concerned about is the significant number of buildings, particularly with the recent devaluation of those buildings by an estimated 25% to 35% to 50%, that cannot be used as collateral, because there are already outstanding mortgages on them worth more than the buildings. In those cases, how can you expect those repairs to be done?

If you have a mechanism—that is all it is, a mechanism; and I do not think this section will be utilized in that many cases—at least you have the option to remedy some of these very serious matters. Your legislation, I say to the government members, is clearly deficient. I would think you would want these situations remedied for the safety and protection of the tenants of this province for whom you purport to act.

**Mrs Marland:** There is just so much to comment on, I do not know where to begin. I intend to ask the minister about this information she has tabled, but I think perhaps before I do that, it is appropriate for me to read a letter that actually addresses the concerns I am trying to bring up in this motion. This letter is from a company called Carport Structural Systems Inc in London, Ontario, and it is signed by Norm Riopelle.

**Mr Mammoliti:** What are you looking at me for?

**Mrs Marland:** I thought you would appreciate my pronunciation of his name.

Mr Riopelle says in his letter dated August 27, 1991, addressed to Mr David Tilson, MPP, "As you well know, there is legislation already in place to prevent, control and monitor coercion on the part of landlords."

It is unfortunate that one of the members with whom I have had this discussion about coercion is not here at the moment.

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"By keeping the numbers of available carport units below the number of interested tenants will again prevent any potential coercion. An obvious common-sense solution then would be to allow interested tenants to purchase a specific service and meet their needs without going through lengthy and costly applications. Simply including 'the provision of covered parking from existing uncovered parking space is a prescribed facility' for the purpose of the act (see Bill 121 and Bill 4) would include our service along with cablevision as a prescribed service."

Whereas we are talking in my amendment about making improvements for a number of reasons, not the least of which, under clause 21(2.1)(f), is "to provide access for persons with disabilities," I would like to read the third paragraph of Mr Riopelle's letter.

"We have found that seniors"—

**Ms Poole:** On a point of order, Mr Chair: Just for Mrs Marland's information, the Liberals have an amendment to section 45 of Bill 121 which deals directly with Mr Riopelle's request. Not to take away from your reading the letter, but it will address it in another section as well or at least attempt to.

**Mr Jackson:** But it will save you from having to read his letter when we come to the section, will it not?

**Ms Poole:** It will save us from having to remember the letter.

**The Chair:** Thank you for the information. It was not a point of order.

**Mrs Marland:** I am so deflated to think that Mr Riopelle wrote to both the Liberals and ourselves, but I will continue just this portion because this is directly in support of my amendment.

"We have found that seniors, the handicapped and citizens with special needs are very interested in embarking and disembarking from their vehicles with ease and safety from the elements (rain, sleet, etc) as well as not having the great difficulty of removing snow, ice and frost. Architects and developers are presently incorporating our systems as a great help to these special individuals and as a means of



lessening the opportunity for sheltered crime. Therefore, I ask you support for those living in existing complexes to have the benefits of covered parking by having the act amended."

I think Mr Riopelle makes a very good argument for my motion, clause 21(2.1)(f), "to provide access for persons with disabilities" and I think clause 21(2.1)(e), "to make a repair or improvement to promote the safety of persons." Obviously that option must be available to tenants. That is simply what my motion is about. It is giving tenants, by a democratic vote, a choice.

Would it be appropriate for me now to ask the minister some questions on this information which she tabled, which I presume is to do with my motion?

**The Chair:** We can proceed that way or, if the committee wishes, after this section we could offer that opportunity. I am in your hands. This information is pertinent to this section.

**Mrs Marland:** Did the minister table this information to be relative to this section?

**The Chair:** Just proceed. In my view, it is pertinent, so you may ask the minister questions.

**Mrs Marland:** I would like the minister to explain to us what is pertinent about this information she has tabled. What does it mean across the top where it says, "Orders with Parking Garage Expenditures," and then it is handwritten "for select offices across Ontario." What does "for select offices across Ontario" mean?

**Hon Ms Gigantes:** These are very good questions. I think because of her much better familiarity with this information than mine, I will call Colleen Parrish from our ministry office for assistance.

**Ms Parrish:** The discussion this morning dealt with whether the combination of the 3% plus the two years carried forward would generate enough rent revenue to deal with certain kinds of structural repairs. Underground garages were one of the things mentioned. There was quite a bit of discussion about that in the amendments. In the amendment proposed by you there was some reference to the carry-forward period. Mr Jackson was talking about later amendments, as was Ms Poole, related to carry-forward. This issue came up. In the course of looking at the carry-forward period and the 3% cap we actually went through a process of pulling orders to figure out whether there was an adequate amount of money. We instructed our staff to go to the offices that were most likely to have these kinds of buildings in them, mostly the Metro offices. We also took three other cities simply at random. We told them to pull, at random, samples of garages. Then we benchmarked them to see whether in fact the system would generate enough money to pay for these repairs.

Since we had done a global wrapup of all the money and asked, "How much in total?" we went through a process of saying, "Let's take so many things at random and check them." What we found was that it was the rare case where there was not enough money over a three-year period. In fact, there is exactly one in this case. We simply chose these at random. Obviously this information was not collected for the purposes of today's discussion. It was done as part of our research. We just happen to have it because

we had done a benchmark on this and remembered we had it, so we thought we would bring it.

**Ms Poole:** All these low figures. What a coincidence.

**Ms Parrish:** They were taken at random. I have no reason to mislead the committee. It is simply that this was the material. As the minister mentioned this morning, there are cases where it is not enough, and we show you a case where that is the situation. We simply have given you the information that was pulled at random from our files.

This would be consistent with the other information we have. For example, when you look at the average rent increases in the past, which have averaged about 11% under the previous system, about 2.9% of that has been for capital in total. We have tried to check the cap and the carry-forward several ways. We have done a chart which shows the whole system. We have done sampling. We have looked at the past. We have tried a number of techniques to see whether there is an adequate amount of money. I simply provide this for information. It was not prepared for this committee; it was prepared for internal staff work.

**Hon Ms Gigantes:** When was it prepared, Colleen?

**Ms Parrish:** I think we did it in August or so, because that was the time after the hearings when we were debating whether we should extend the carry-forward period. That was a popular request in the hearings, so we went through a benchmarking process to see how much money would be generated. We also looked at the costs-no-longer-borne changes and figured it all out, so this material was prepared during the summer, not in relation to clause-by-clause review.

**Mrs Marland:** Thank you for the explanation. I think there are two ways to respond. One is that if this indeed is the case, then why would you be worried about my amendment? The other response is that I respect what Ms Parrish is saying in answer on behalf of the minister, that this was not prepared for any reason necessarily to be interpreted as a rebuttal to this morning's discussion of this committee. However, I think this information is highly selective, as it says at the top "for select offices across Ontario." There is nothing in there over—I think \$290,000 is the biggest. It is a parking structure repair. It is the biggest item on this list. Would the committee allow me to table where there may in fact be multimillions of dollars in one repair?

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**Hon Ms Gigantes:** Could I explain here, Mr Chair?

**Mrs Marland:** No, I have not quite finished.

**Hon Ms Gigantes:** If you do have a question about that, I think it would be useful to deal with it before you make the assumption that what we are dealing with here is a total cost of \$290,205. If I could just ask Ms Parrish to go back over what that figure means, I think it would be helpful.

**Mrs Marland:** I read it as an item allowance. It is under the column called "Item allowance."

**Hon Ms Gigantes:** Yes, that is where I am looking. That is where I just read. Would you like to have a further explanation?

**Mrs Marland:** Sure, if you want to.



**Hon Ms Gigantes:** Please, I think it would worthwhile.

**Mrs Marland:** I am interpreting it, Minister.

**Hon Ms Gigantes:** I would like your interpretation to be correct. That is why I am suggesting it right now.

**Mrs Marland:** Would you like to know what my interpretation is?

**Hon Ms Gigantes:** I just heard it.

**Mrs Marland:** I am interpreting it as the allowable amount. That is why it is under a column called "Item allowance."

**The Chair:** Would you care for a response, Mrs Marland?

**Mrs Marland:** Sure, why not?

**Ms Parrish:** The item allowance is not the total capital amount. It is the one-year cost, so it is essentially the amortized amount. The amortization period is now somewhere around 15 years, so this is essentially not the total cost of the repair, which would probably be somewhere around \$208,000 times 15.

**Mrs Marland:** Right.

**Ms Parrish:** This is just the one-year cost.

**Mrs Marland:** I understand that. I would like to know if members of the committee can also table information.

**The Chair:** Of course members of the committee can table information at any point.

**Mrs Marland:** Okay.

**Mr Owens:** My question around this and—

**The Chair:** Mrs Marland has the floor, Mr Owens. You are on the list.

**Mrs Marland:** Do you want to jump in now? I have not finished, but you may jump in.

**Mr Owens:** I would, actually. My question is to Colleen Parrish. In terms of the process that was used to obtain the figures, we do not have a cost of the repair; we are just looking at the potential rent and the allowance for repair based on the rent.

**Ms Parrish:** The allowance is based on the total cost amortized over the period the amortization period allows, which I think is about 15 years for concrete. For some of these other things it is less, like garage door openers and lights and so on, probably a 10-year amortization. Essentially what happens is that you ask, how much did it cost to do this repair? It cost \$3 million. If you amortize that over 15 years, how much is that each year? Then there are various things: You have to add the landlord's own labour and interest, because the landlord has probably borrowed the money.

**Mr Owens:** In terms of establishing the cost to base the set of figures on, were site visits made to these buildings by a P. Eng. firm or a concrete restoration firm or somebody, or were they based on mathematical models?

**Ms Parrish:** You have to have completed the garage repairs before you get any money. They would have had to have completed the repairs. They would have to show evidence that they were completed, what they were for and evidence of payment.

**Mr Owens:** That is what these figures are based on? I see.

**Ms Parrish:** These are all actual cases.

**Mrs Marland:** Can I get the floor now?

**Mr Owens:** I wanted to make sure we were talking about the same thing at the same time. Thank you.

**Ms Parrish:** Yes, these are all actual dollars.

**Mrs Marland:** I think the information is very interesting. It becomes more interesting as you ask the question. The item identified as L-2687 is a 410-unit building. For the parking structure repair the one-year allowance is \$290,205.73. You have just said—I cannot recall exactly the figures you said, but in the millions. Was that what you said that might be?

**Ms Parrish:** It was probably somewhere around \$3.5 million or \$4 million.

**Mrs Marland:** In any case, it is 15 times that amount, so say it is around \$4.5 million. Is it not ironic that individual gets 3% a year for two years to pay for that?

**Ms Poole:** Three.

**Mrs Marland:** Pardon me, three years to pay for that. Thanks, Dianne. Yet when you are working it out as an item allowance it is amortized over 15 years. I mean, he can increase the rent for three years to pay for it, right?

**Ms Parrish:** He increases the rent for 15 years, which is when it is taken out of the base. He gets three years to work up to putting in the full amount of \$290,000 in rent increases. After that, he charges it for up to 15 years, and that is when it gets taken out of the rent base. Under the current system he charges it for ever even if it has all been paid for.

**Mrs Marland:** Okay. Well then, where does the 3% per year come in?

**Ms Parrish:** Essentially it is actually five, because remember, he has already gotten two. In this case he can pull it all in in two years, but just to make the math easy let's say it is five and five. What you do is you say: "Here's this \$290,205.73 that you can increase your rent. In the first year we'll allow you to increase your rent by half, \$145,000. Then the next year we'll allow you to increase it by another \$145,000 a year. Then we'll allow you to charge the tenants that additional rent for 15 years"—which we will say is the end of the amortization period—"then it comes out of the rent base." At that time, the repair is completely paid for by increases in rents over this 15-year period.

**Mrs Marland:** Okay. Thank you for the explanation, because what that says to people who own property in this province is—I mean, if we are talking about a parking structure repair in that amount of dollars, we are obviously talking about something that has to be done right away. Where in heaven's name do we think the property owner gets the money to pay for it? With the cap of 3% for three years over and above the 2%, although it is amortized for 15 years, which is perfectly correct, he or she has to wait 15 years to recover the full cost of that item. In the meantime that poor soul has upfronted the work. If the work has



to be done, and I guess this is what is putting a lot of these property owners into bankruptcy, if they have that amount of work to be done, where are they supposed to get the money from? They cannot pull \$4.5 million out of the air, and from your description of what really happens here it is—

**Mr White:** Probably have to borrow like the rest of us.

**Mrs Marland:** I have been very good, and actually we all have today, Drummond, without interrupting, so it does help if you do not.

**Mr White:** Okay.

**Mrs Marland:** What we are saying is that it is amortized over 15 years, that in 15 years he will have recovered it through his rent. Correct?

**Ms Parrish:** He will have recovered the full cost of the repair plus the full cost of the interest of borrowing the money over the period.

**Mrs Marland:** Right, exactly, the full cost of recovering the money he has borrowed over the period. That is assuming he can borrow the money, and that is the crunch right there. You have just said it perfectly. That is the problem facing the property owners in this province today. They cannot go out and pluck \$4.5 million out of the air to do these major structural repairs. These are not repairs they would have any choice about, I suggest. If you are going to have to spend \$4.5 million, it would not take you very long to want to defer it if you had any choice about it. But your socialist government, Minister, is saying, "It's okay to make it necessary that the repair is done today, and you'll get your money back in 15 years."

It is not going to happen, and if you think the alternative is that when this poor soul goes bankrupt the government comes along and picks up the building, and if you think our children and grandchildren can afford to pay for all this acquired housing with the future taxes of this province, then it is an even more depressing picture. The more you get into this bill, quite frankly, the more depressing it becomes, because the fact is you cannot expect people, I do not care who they are, whether it is Conrad Black or any other—I do not even know if Conrad Black owns rental property—corporate entity that has, you would think, a large amount of security behind it, to stay in the business of rental accommodation if, when they are faced with a major increase in their need for funding through some major repair—why is it that under the Condominium Act it is a requirement for condominium corporations to have a fund where money is contributed so that condominium corporation always has—

1510

**Mr Owens:** Capital reserve funds are not part of this amendment.

**Ms Poole:** No thanks to you guys.

**Mrs Marland:** The condominium corporations have this fund, under law, in order that they always have this pot of money in reserve so that when they meet a tremendous repair or reconstruction cost they have the money there.

Why do we think that is in the Condominium Act? It is because condominium corporations do not collect rent and somebody has to have that money in reserve. What we are

saying to these landlords who have been under rent control for 17 years now—and as I said yesterday, if you do not care about the 11,000 big landlords who own buildings with more than seven units, would you please care about the 139,000 little guys and gals who own six units and less who may be faced with any one of the categories of repairs that are in my amendment and do not have the money to do it? On the one hand it may be necessary; on the other hand it may be necessary and desired by the tenants.

I think this information that the minister has handed out really points up the fact that, "It's okay because you have 15 years' amortization and eventually you'll get your money back." I have to ask this government where it thinks those poor souls are going to get the money in the first place if they cannot get it from their rent. What individual wants to live in a building where that kind of work is not affordable and is not done? You can issue all the work orders in the world to get these kinds of major structural jobs done, but if the owner of the property does not have the money, you cannot get blood out of a stone.

So what will happen? I ask the minister, what happens where you get these major structural jobs by a work order and there is no money available to do them? What happens to that building and what happens to those tenants in that building if that work cannot be done? I would like the minister to answer that question.

**Hon Ms Gigantes:** I will try to be very brief. I think what the member is talking about is very much more than she is entitled to talk about in terms of the information we have provided here. The information we have provided here indicates how the landlord, through rents, will recover over the amortization period the amount he pays, including the financing costs, for what he undertakes for a major renovation.

Now that is not the only money the landlord receives during that period. If you want to look at item L-2687-ET, the 410-unit parking structural repair item, you will see that the gross potential rent in that building is \$3,195,540.96. We are not dealing here with a small landlord. I do not know about the height of the person, but this person is in charge, obviously, of a major operation. This is not one of the heartstring cases that Mrs Marland was just referring us to; we are talking big time here. Anybody who takes on a 410-unit apartment building and is handling gross rents over \$3 million is not going to have too much trouble raising \$290,205, all of which is going to be returned through rents quite stably and in quite a certain way using the mechanisms we have provided in this bill.

So I think the information is being looked at through the wrong end of the telescope as far as Mrs Marland is concerned. What this information can and should tell us is that the mechanisms in place are going to work even with very large jobs that will, with financing costs, be very expensive and for which the amortization period is lengthy.

If what she is suggesting is that we are going to provide some kind of legislation in which the tenants in this building have to pay for this whole job and the financing for the job over a five-year-period—is that what she is suggesting, or would she like a three-year-period? How fast would she like to see the rents rise in this situation?



Does she think the landlord should get paid back in one year or two years? How many years does she suggest?

There are not many investments in this world where you put your money in—this is the hypothesis she is taking us through—you borrow the money to do an investment and you get all your money back, plus the value of your investment, within—how long, Mrs Marland? How long do you propose?

**The Chair:** Mrs Marland.

**Mrs Marland:** I choose to ignore the minister's sarcasm. I do, however, like to point out that in the example I was using, yes, the gross potential rent is \$3 million, but also, by the figures from the ministry, we are talking about a structural repair that is \$4.5 million. If there is not some reasonable access to an increase in rent to help cover that tremendous capital outlay—and I think the record of Hansard shows what kind of percentages we are talking about. We are not talking about huge rent increases; we are talking about fair rent increases.

In my amendment that is before us now I am actually talking about an option where 75% of the tenants agree to having a rent increase to cover work in any one of those eight categories. I do not pretend to be an accountant or a visionary, so I do not know what the actual costs and the rates of returns will be in terms of interest costs down the road, etc, but I certainly have enough common sense to know that if this government wishes to penalize the tenants in the province by penalizing the people who own their property, this is certainly the legislation that will do it.

1520

It is obvious they are reaching the point where there is no point in trying to discuss it any further. We would not in fact be having this discussion if the minister had not brought this information in. The information is very useful to point out the argument we have been presenting, that there can be tremendous costs to repairs in some of these categories. When the costs for those repairs in some of those categories come to that property owner, it is probably not going to matter whether 75% of the tenants want it or not; the money simply will not be available and the work will not be done.

The minister did not answer the question I asked her: What happens to those poor tenants when major restoration and repair work is not done and the building goes into bankruptcy and there is then nowhere for those tenants to live, as the building is not then receiving electricity or fuel for heating?

If the minister wants to be her usual cavalier, sarcastic self, that is up to her and that is her own option, but my questions are serious and my questions are sincere on behalf of the tenants and the property owners. I think this information should be kept alongside any section in this bill where we deal with capital improvements because it documents just how major those capital improvements can be and what a financial burden, in turn, they become for everyone associated with rental accommodation. Obviously, if the government chooses not to support my motion, then the tenants do not have any choice about it either. If they want to ignore the tenants, that is up to them too.

**The Chair:** Thank you. I have Mr Mammoliti, Ms Poole, Mr Owens, Mr White and Mr Ward.

**Mr Mammoliti:** I will start off with a question to Colleen Parrish. How many of the 25% of the landlords in Ontario that applied for an above-guideline increase were small landlords?

**Mrs Marland:** It is 17%

**Ms Parrish:** In any given year, and then some people come back more than once.

**Mr Mammoliti:** Is it 17%?

**Ms Parrish:** There is a tendency for the majority of applicants to be larger landlords, but small landlords do apply as well. I honestly cannot tell you right off the top of my head. I would have to look into that.

**Mr Mammoliti:** Where did Mrs Marland get the figure of 17%?

**Ms Parrish:** No, 17% of the landlords apply for an above-guideline increase in any given year.

**Mr Mammoliti:** Okay. I thought I heard 25%.

**Hon Ms Gigantes:** Yes, you did, George. I corrected that figure the other day. I used the figure of 25%.

**Mr Mammoliti:** All right, it is 17%.

**Hon Ms Gigantes:** Yes.

**Mr Mammoliti:** I would be willing to bet that not very many of the small landlords have applied for an above-guideline increase, and of those who did, how many of them would not be satisfied with 3% for three years? I would be willing to bet that it is a very small percentage. If I am right, I would say that Mrs Marland's argument is not valid, in my opinion.

**Ms Poole:** But they get 2% without applying.

**Mrs Marland:** Then it will not be a problem, will it?

**Mr Mammoliti:** No, I think it is an argument you should not have used.

**The Chair:** Through the Chair, please.

**Mr Mammoliti:** Using the smaller landlord in this particular case I would say would be wrong.

Going over to Ms Poole's argument and statement earlier in relation to this amendment, she talked a little bit about garages again. She keeps bringing it up time and time again. Earlier this morning Cam Jackson brought it up as well in relation to what I said a year ago. If I do not respond, I will feel guilty. I do not know whether I will sleep tonight if I do not respond.

What I would like to see in Hansard is where I said that the interior part of the garage is at risk. I could say that they will not find that in Hansard and that Mr Jackson's comments this morning were exaggerated. A year ago, as I do today, I spoke of salt being poured like water on driveways. There are quite a bit of driveways that sit on top of garages. I know that most apartments have driveways and parking lots on top of underground garages. That is what I was referring to a year ago when I said that landlords poured salt like water on those driveways and parking lots.

The neglect was where they would not clean it up, where they would not wash it off or sweep it up and where the salt had corroded the asphalt and created potholes



which were not repaired, which I believe is pretty consistent around a lot of the apartment complexes. You will find potholes after the winter. Those potholes continue to grow and are never fixed. What does that do? If and when a superintendent or somebody who is working for a landlord continues to throw salt in that pothole, the concrete underneath that asphalt is going to decay. What does that do to the garage?

Let's talk a little bit about some of the complaints that tenants have come up with over the years and perhaps come even into the offices of Ms Poole and Mrs Marland with. They say that this substance falls on their vehicles and it either chips the paint away or it corrodes the paint away. "What am I to do?" they ask. "What is this stuff?" Let's go back to my original argument from a year ago. When the salt on top of the roof of the garage eats through the asphalt, if it is not properly maintained it will corrode the concrete, which in turn will basically melt away that concrete and it will land on top of those cars. That is what I talked about a year ago. I think I have made myself quite clear.

**Mr White:** You did.

**Mr Mammoliti:** I hope so.

**Ms Poole:** You made yourself quite loud, anyway.

**Mr Mammoliti:** I felt perhaps I had to wake the room up a little bit.

**The Acting Chair (Mr Morin):** Please address the Chair.

1530

**Mr Mammoliti:** I am sorry. When you talked a little bit this morning about reinforcement rods in steel, it would exist as well, Ms Poole, through the Chair. Most of the reinforcement rods that exist in underground garages exist on the top of the garage if there is a parking lot on top of it, and those decay as does the concrete when it has been neglected.

If a landlord or a staff member continues to clean up the salt and the debris outside and perhaps patch up that asphalt that has those holes in it, chances are that the decay will take a lot longer and that instead of replacing or restoring the garage after 15, 16 or 17 years, perhaps that garage could last 25, 30 or 35 years. I think that is something we should remember.

It brings me back to neglect by landlords and how they could have prevented tenants from paying for this in the past as well. I do not want to yell this time, but I hope I have made myself quite clear. At no time did I talk about the interior of the garage. This morning I did because I still feel the same way, that they could delay the process by sweeping it up and by cleaning it up on a regular basis, which they are not doing. I will just leave it at that. I think I can sleep at night now.

**The Acting Chair (Mr Morin):** Ms Poole.

**Ms Poole:** With all the patience in the world, I was not going to respond to Mr Mammoliti again, but—

**Hon Ms Gigantes:** Oh, you are weak.

**Ms Poole:** I am very weak. I just cannot let it go. Just one more time, one more paragraph; I am going to quote

one more time from the Concrete Restoration Association of Ontario:

"I hope as well that you understand clearly from what I have said that this is not an issue of routine maintenance. No amount of minor maintenance, as opposed to rehabilitation, could deal with this phenomenon. Waterproofing, without major restoration, only prevents the ingress of more salt and water but does nothing to restore the integrity of the structure."

And that is what we are talking about, so I am just going to leave that at that particular point and I hope we do not discuss this any more times.

Minister, the question I have for you, through the Chair, relates to the sheet the Ministry of Housing brought before us where there were selected examples of underground parking garage repairs. It is obvious, from looking at a number of these, although they may say "garage renovation" or "garage restoration," that by the small amounts they are really not a rehabilitation and they are not what we are talking about.

The one I would like to draw to your attention is the second one in the list: L-2343-NY, 12 units, garage renovation, \$21,907, which results in a percentage allowance of the gross potential rent of 30.80%. The reason I point that one out is not only that it has a big number, but because I think it epitomizes the type of renovation that we are going to have problems with. The larger ones, even the \$4-million one, are not as much a problem as the ones where you have 12 units. That is low, because a lot of buildings with 12 units would not have underground parking.

**Hon Ms Gigantes:** That is very low. It is very unusual.

**Ms Poole:** You are talking about buildings with between 35 or 40 and 100 units. Those are the ones which could have a parking garage underneath them and yet, because of the small number of units, not have corresponding rents, not to justify doing the work but so that the landlord could receive reimbursement. They are the ones probably most at risk where the landlord simply would not do them. Of course, when you get to the point where you have 100 units, it is extremely common to have underground parking.

I think those are the ones you will find cannot get enough revenue back from the rents, with your 3% cap, to alleviate the problem. If the ministry's answer is that there is not a lot of these, then I say, what is the harm in having an amendment, whether you want to do it through 21(2.1) or another mechanism? What is the harm in providing relief if there are not too many in this category?

On the other hand, if there is a substantial number, then surely we have to provide that relief. I think you are going to find that it is not the 400-unit or the 600-unit building that gets into difficulty. They will be extremely expensive renovations, no doubt about it, but they have enough tenants in the building that they can spread it out. But some of these smaller buildings are really going to have difficulty in doing it.

It is unfortunate the way this is set out. I know it was not set out for our purposes; I am not trying to be critical of the ministry. You were just providing what you had on hand. But these descriptions that are on this sheet are arranged—



there was one here that was a garage. I am trying to find out where it was. It was listed as something like a garage rehabilitation and yet it was a very small amount of money, so I knew it was not actually a rehabilitation. We have got them called garage rehabilitation, garage renovation, garage restoration, garage concrete. It is hard to estimate from this the depth of the work that is being done other than by multiplying and finding out what the dollar amount is.

If you look again at this situation, I think you are going to find that the smaller buildings are going to have a great deal of difficulty paying for the restoration, and not only that. If all the money has to go to the garage restoration, it means absolutely nothing else would go into the building at that period of time, at least nothing that the landlord would receive reimbursement for. There certainly would not be any incentive for the landlords. If you have taken your full allowance for capital repairs—

**Hon Ms Gigantes:** For how long?

**Ms Poole:** For the next three years. If you used it for garage restoration, and you are talking about also using the 2% that is allocated in the guideline for capital repairs, then what happens when the landlord wants to do something like even replacing carpets, which is not on the necessary list but certainly, as far as tenants are concerned, is something they would like to see done? What happens to that type of thing? What happens to the other repairs that might need to be done in that length of time? They are to wait, if indeed the landlord first of all does end up with enough money to do it, if the landlord can get financing to do it. I will tell you that if I were a bank or a financial institution and I were looking at loaning the landlord the money to do a renovation and saw that it was not going to be fully covered by the rents, particularly in cases where—

**Hon Ms Gigantes:** In what period?

**Ms Poole:** Even over the three years.

**Hon Ms Gigantes:** In three years it all has to be paid for.

**Ms Poole:** No, I am talking about the rents for that three-year period. I am not saying that you have to pay it. I am saying that if a bank or financial institution makes a loan it has certain terms for that loan. Over the terms of that loan, if it is a five-year loan, they expect to be paid off in five years. If they gave the type of mortgage to coincide with the amortization, say 15 years, they would expect it to be paid off, principal and interest, in 15 years. Whatever the set term is, that financial institution will need revenues coming from rents to satisfy that loan or else it will not grant the loan.

**Hon Ms Gigantes:** Over 15 years, say.

**Ms Poole:** Over whatever the financial institution chooses as its particular arrangement. If they cannot be satisfied that the revenues are there from rents to pay off that loan, they will not grant the loan. That is the way finance works.

**Hon Ms Gigantes:** Why are you suggesting that we should change our legislation? Even in a case where 75% of tenants—for example, in case L-2343-NY, nine of the tenants said, “Yes, you can break the 3% cap.” What about

the other three tenant households? What if they cannot afford that? Why should they be sacrificed for your decision? It really basically is your prejudgement that if nine out of 12 households say “Yes, it’s okay by us, we can afford to help you pay this back in seven years,” so you only have to take out a bank loan for seven years even though the garage might last you for 15 years—why should those three households be left vulnerable to your prejudgement on that?

1540

**Ms Poole:** It is not a matter of my judgement. It is a matter of experts’ judgement, which I rely upon because, unlike you, I am not an expert in every area. I rely on those who actually have expertise in the field to tell me what is doable and what is not doable, and 75% for tenant consent is an extremely high ratio.

**Hon Ms Gigantes:** Are you suggesting that it is not doable to repair garages?

**Ms Poole:** I am saying that if the money is not there, how is the landlord to do the repairs?

**Hon Ms Gigantes:** We have just indicated to you several examples in which clearly the money would be there.

**Ms Poole:** I am giving you an example where it is not there.

**Hon Ms Gigantes:** There is one example I had indicated, as we tabled this, where clearly the mechanisms provided in the legislation are not going to be sufficient for this landlord to be able to swing the finances for the repair in an easy way.

**Ms Poole:** So that is tough, eh?

**Hon Ms Gigantes:** He is going to have to have some cash saved up in this one or be able to borrow it from his mother-in-law or her father-in-law or something, because this building with 12 units has an underground parking garage apparently. It says “garage renovation.” That might be an outside garage; we do not know.

In any case, clearly the mechanisms of the bill are not sufficient. Because of that example, (1) you would like three households in the 12 units to be left to your prejudgement that if 75% say yes, they can break the cap, then that is good enough, or (2) you are going to say the bill should be rewritten so that no matter what the situation in terms of the financial capacity of the landlord it is going to go smoothly for that landlord when the garage needs renovating. We are going to make the tenants pay for it and we are going to make the tenants go through rent increases on an annual basis, year after year, to an extent that will meet that landlord’s needs, no matter what they are. Otherwise, you say, we are putting the whole system of rental and adequate maintenance in distress. I cannot accept that.

You can find problems; there will be problems. We see one here. If I had not been willing to let you see the problem, why would I have tabled this?

**Ms Poole:** The fact that we brought up the problem this morning might have something to do with it.

**Hon Ms Gigantes:** No, no. I said to Colleen, “Have we got examples?” “Yes,” she said. I said, “How do they do?” She said, “They don’t all cover.” I said: “Bring it in. Let’s talk about it.” Here we are.



**Ms Poole:** The minister's response gives the typical NDP solution to everything. One solution must cover all. I am not talking about changing the whole system. I am talking about making an allowance. I would like to ask the minister a question. If 100% of the tenants agreed in writing to it, would you accept the amendment?

**Hon Ms Gigantes:** No, I would not, but that would be for a lot of other reasons.

**Ms Poole:** Then it all comes down to a very facetious argument by the minister.

**Hon Ms Gigantes:** Not at all. I will not accept that.

**Ms Poole:** She talks about the tenants who do not agree to it, who do not feel it is fair, who cannot afford it.

**Mr White:** Mr Chair, we have had the minister referred to in very undignified language—"facetious," "cavalier," "sarcastic".

**The Chair:** I did not hear that, Mr White.

**Ms Poole:** I said her arguments were facetious.

**Hon Ms Gigantes:** My arguments are not facetious in the least.

**Ms Poole:** It must challenge you to say the word.

**Hon Ms Gigantes:** Do not make fun of my lisp.

**Ms Poole:** I did know you had one. I was making fun of the fact that I hardly got "facetious" out.

**The Chair:** Could we come back to a discussion of the amendment?

**Ms Poole:** I think the fact is that the minister is saying that even if all tenants in the building agree to something, the government is not willing to put in the flexibility to allow it to happen. We are talking about what I would consider to be necessary things; they are not frivolous items. We are not saying if 100% of the tenants or 75% of the tenants want to renovate a lobby. We are talking about pretty substantial stuff like boilers, underground parking and access for people with disabilities. Now that it comes right down to it, when we ask the question to the minister whether, if it is 100%, she would accept it, she still says no.

**Hon Ms Gigantes:** "No" for different reasons, though, and I say that seriously. That is not facetious.

**Ms Poole:** What different reasons, perhaps?

**Hon Ms Gigantes:** Without putting extra tests on it, I can say to you that I would not accept 75%. When you get to 100% I think you have to ask yourself about the capability of some tenants, and in fact a large enough proportion of tenants, of saying no in a situation where everybody or almost everybody in the building is demanding they say yes.

I do not think it is being very realistic to talk about this as if we are talking about a free and easy democratic election situation. This would be a very high-pressure situation in which people who may be quite vulnerable to that pressure would feel it quite intensely and end up having to move. I just am not satisfied with that and I am not willing to try to set up a Magna Carta around the whole issue either. I do not see that we have to set up a whole new electoral regime to deal with what I believe are going to be very few cases where one makes a good argument that we should go above cap. I think there are going to be very few cases.

**Ms Poole:** Mr Chair, as far as the minister's last point about there being few cases, I believe I made the same point this morning, that I did not think there would be an extensive number because I did not feel there would be that many situations in which 75% of the tenants would agree. If you move that up to 100%, which the minister still has disagreed with and denied, then I think it is highly unlikely that it would be used. In its current form, if it is 75%, if it provides fairness and equity—

**Hon Ms Gigantes:** That is a big "if."

**Ms Poole:** If it does, if it gives that opportunity, then it is worth it regardless of whether it is 100 applications you would get or whether it is 200, 500 or 1,000.

I really find it abhorrent that we have legislation here which I do not think has very much flexibility in it. I know the minister disagrees. She thinks that, given NDP ideology and how it is usually so inflexible it practically breaks, this is very flexible. Well, I do not think it is. When you are denying tenants the right if they want to do something, with the further restriction on it that it has to be with fairly important items that are being replaced or being added—

**Hon Ms Gigantes:** Would you support it for each of those categories?

**Ms Poole:** I think this list is extremely well compiled. There is probably little likelihood, given the cost of a roof, that in most cases a roof would not be covered under the cap, but certainly it covers situations where you have quite expensive repairs or you have a number of repairs that need doing.

If you as a tenant are suffering without a regular supply of hot water because the boiler is constantly being repaired—and please do not use the word "neglect" in this situation; I am talking about a situation where the landlord is making best efforts to constantly repair a boiler which should be replaced—and at the same time your plumbing is leaking because it is galvanized plumbing and it is 40 years old, and if there are other things that you want, such as new windows for energy conservation, if you want those and it is a small building, the landlord cannot make those capital improvements without it costing a significant rent increase.

But suppose a large majority of the tenants wants it. I kind of snickered when the Conservatives called it a democracy clause because I thought that was overstating it somewhat, but it does come down to a person's democratic right to participate in his or her building. I have often heard the phrase used by NDP members that a tenant's apartment is his or her home, and I genuinely believe that, but part of the thing is that if a tenant wants something done, and a majority of his or her peers also want it done, and if it meets a number of the government's criteria for necessary repairs at the same time, then I do not see why you should prevent tenants from effecting the means to have it done. That is basically what it comes down to.

1550

**Mr Owens:** I will just take a minute. I would like to begin by thanking the minister for restating the very point I made this morning with respect to making decisions on behalf of people who are not necessarily in a position to afford these decisions. Again, the question comes down to



what happens with these people. How do you house them and where do you house them?

I think that mixing the issue of tenant democracy and the issue of the amendment we are discussing is not a real issue. If a landlord is doing his or her job to keep up with the work as it becomes necessary—and we are not using the word “neglect,” that N-word, I suppose—the percentages we have seen are I think reasonably generous and still allow the landlord to make a generous profit. I know that is the P-word. Perhaps it is not recognized that this government does support people making money, because people making money are creating jobs, and we all need those kinds of jobs here in the province.

I do not see this issue of the 75% or even, in the friendly amendment, of the 100%. I just do not think the member for Eglinton understands the types of coercion or, perhaps a nicer way of putting it, moral suasion. I look at the kinds of people who live in buildings in my riding and I would suggest that they would have some difficulty in saying no.

So what happens? The repair or the capital expenditure is made and what happens? They cannot afford to live there any more. Where do they go? I can tell you they certainly come to my office to try to find housing for themselves. I think that mixing tenant democracy and private rental situations is like trying to mix oil and water, because you have a profit motive there at the end of the day for an owner, whereas in a co-op or in true tenant democracy there is no profit motive at the end of the day. I just think you are mixing apples and oranges and it is not an appropriate comparison.

**Mr White:** I would like to particularly thank Ms Parrish for bringing this document to our attention, and also for the excellent work and conscientiousness of the ministry. I, as a member, have been continually impressed with the preparations your ministry has offered to me on a number of occasions not related to this bill. But I think this is a good example of the information we need to deal with.

**Ms Poole:** On a point of order, Mr Chair: I am sorry, Mr White, to interrupt you, but I thought this information is very valuable: Ms Parrish was appointed by the Liberal government.

**The Chair:** That was not a point of order.

**Ms Poole:** In spite of that, she is a very good person.

**Hon Ms Gigantes:** Ms Parrish is a perfect example of a perfect public servant.

**Mr White:** I did not make any comments as to which party appointed her. I am glad to hear that clarified.

Regardless, this information is very helpful in terms of the amendment in front of us. The discussion which we have had about the cost of these repairs I think is very interesting. From the presentation, it would seem as if somehow landlords should be exempt from the financial realities that most of us have to face.

In the event that my garage were damaged, I would have to pay for it. I would have to go to my credit union to borrow money. I would probably amortize it for 20 or 25 years because I am not that overcome with dollars. That repair would come at my expense. The end point of it

would be an enhancement of my family's capital values, just as the repairs cited here are an enhancement of the capital value of this apartment.

A 15-year period seems to me to be a fairly short period. It seems realistic. I would suggest in fact that most of these garages would probably last a little bit longer than that, perhaps 20 to 25 years. The financial arrangements here have been worked out in a way which is not terribly onerous for the tenants. It is difficult, but not terribly onerous. But if the landlords are to be exempted from the financial realities which face most of us, who then would bear those realities? Who would bear the brunt of them? I would suggest to you they would probably come at the expense of those tenants.

The work the ministry has done clearly indicates that there is a middle way. We do not have to have a situation whereby tenants are penalized time and time again by means of onerous rent increases. Rather, a period can be worked out which is reasonable, a rent increase can be worked out which is reasonable, and at the end of that period the cost which is no longer borne can be reduced from their rent.

I have seen from tenants in my riding some of the most incredible submissions that the landlords have made about costs. I would like to give you a couple of examples. Moulding. Now, moulding is just a little tiny piece of wood that goes around a wall.

**Mr Jackson:** Like a chair rail.

**Mr White:** Yes, like a chair rail, like that, yes. This landlord was going to be charging, for 20 feet of moulding, \$530.

**Hon Ms Gigantes:** Gold moulding.

**Mr Jackson:** That includes labour costs.

**Interjection:** That would be non-unionized labour. Terrible, eh?

**Mr White:** I have purchased moulding and I know this particular piece of moulding costs something in the neighbourhood of 17 to 21 cents a foot, hardly something in the neighbourhood of \$40 a foot.

**Mr Jackson:** Jeez, that's bordering on usury, isn't it?

**Mr White:** Indeed, Mr Jackson. In his submission in terms of carpeting, he was suggesting a cost for installed carpeting in the neighbourhood of \$95 per square yard. I was dumbfounded.

**Hon Ms Gigantes:** Maybe he didn't understand the decimal system.

**Mr White:** Perhaps not. I was dumbfounded. I think that obviously there has to be in these situations some sort of a compromise between the costs which are reasonable for repairs and the cost that tenants can in fact bear. I do not think that landlords should have some sort of special exemption from the financial realities which affect all of us, which affect any investor in terms of their own personal capital equity, or any commercial or industrial concern. All of us in fact have to go occasionally to our credit unions, to our trust companies, banks and other financial institutions and borrow money, the costs of which have been calculated here.



For a landlord with a property with a gross income of more than \$3 million, not to be able to borrow a little bit of money on the basis of that capital value would strike me as being passing strange. I would just like to conclude that I think the conscientiousness of the ministry deserves merit and that it is an obvious demonstration of why the amendment, which seems reasonable on the face of it, is unfortunately unnecessary.

1600

**Mr B. Ward:** I know the opposition members have some concerns about certain portions of this bill and they make arguments from their perspective. I think that once the bill is passed we will have to see exactly what happens in the rental market to know whether their arguments were valid or were perhaps prone to exaggeration, which I think some were.

I do know what we had, though. I do not have a large population of tenants in my riding, but I know there were some aspects of the previous legislation that led to very large rent increases to tenants. I can think of one particular building, 42%, even though the landlord asked for a quarter of that, if you can believe it.

I think anything is an improvement over what we had. When you look at this amendment, there is a suggestion that costs be flowed through into rent increases for a number of large capital items, such as roof repairs, plumbing, boiler, etc. But it does not say over what time line the rent increases should be added.

The minister asked Mrs Marland what she was looking for, one year, two years, three years, when it comes to the 410-unit apartment building. The question I have—it is not really clear to me on this paper we received—if the entire amount were allowed in the wisdom of the rent review officer to be flowed through in one year, what increase would those tenants face? I was wondering if the minister or the staff would answer that question. It could be astronomical.

I really do not think this amendment clearly stipulates what restrictions the rent control officer would have when making the decision. That is why I cannot support this amendment. I do not think the Liberal Party should be supporting it because it had some form of rent regulation in place when it was in power.

I think this amendment would once again create uncertainty and tremendous hardship on tenants, especially ones who were not sure of their rights. We have heard about coercion and intimidation. I can envision buildings that are primarily of seniors, and in Brantford they are not well-organized. I am sure most are aware of their rights, but there are some who are not. I can envision a landlord knocking on individual doors and requesting or telling the tenants that they have to sign this consent form. Here is a senior, all alone, who has lived in the building 10 or 15 years, whose husband or wife has died and he or she has no family. They would sign, not aware that it is their right not to.

Or, as the minister stated, perhaps the majority of the tenants would be double-income people, could afford a tremendous rent increase, yet here are more seniors, on a fixed income, pressured, intimidated, unaware of their

rights and once again forced to sign an agreement which perhaps they are not even aware that they do not have to.

I cannot support this amendment; I urge this committee not to. One, it is unclear what restrictions a rent control officer would have. Two, although it mentions 75%, I do not think it deals specifically with the tenants' rights and awareness of their rights so that they know they do not have to sign this consent form. Those are my reasons I am not supporting this amendment.

**Hon Ms Gigantes:** I am going to make an offer to Ms Poole. I think we have probably said all that really needs to be said on this amendment, so I will not say any more if you will not.

**The Chair:** You may continue, Minister.

**Hon Ms Gigantes:** I thought she might want to respond.

**Mr Jackson:** By definition, she will have broken the offer. This is sort of like High Noon four hours late.

**The Chair:** It is great to have a colour commentator.

**Ms Poole:** On a point of clarification: Does that mean I could not respond to Mr Owens, Mr White and Mr Ward?

**Hon Ms Gigantes:** Well, that would be my offer, sort of.

**Mr Jackson:** And her hope.

**Hon Ms Gigantes:** That is what I had in mind.

**Ms Poole:** That takes away the rest of my fun for the afternoon. Well, I will tell you, Minister, if this is not breaking the terms of your offer, I will agree to it if the Conservatives agree to it.

**Hon Ms Gigantes:** We might make another offer to Mr Jackson because it is his amendment. I think he probably needs a few minutes to address in a wrapup way. It is a Conservative amendment, so I would not mind if we had some reasonable accommodation.

**The Chair:** Shall I take the two members off the list?

**Hon Ms Gigantes:** You can take me off the list.

**Ms Poole:** You can take me off the list as long as no other government members are speaking on this, because I cannot guarantee I would not respond to George if he did it again.

**The Chair:** Well, then, if Mr Jackson wishes to make a few comments in wrapup.

**Mr Jackson:** Strictly because I was invited to.

**Hon Ms Gigantes:** By popular demand.

**Mr Jackson:** Not really. I try to speak only once to a motion, and as a Chair of a committee, I am trying to be helpful—although I am not always; I know that. It is clear, whether we want to state that there are motives or ideologies or whatever backing this approach—I mean, we have had ample opportunity to discuss why we believe in what we presented and why we cannot support it.

I guess the substance of what I was concerned about is that I do not see in the legislation which the government is presenting opportunities for tenants to come together and express those kinds of needs which they would like to see addressed. Should there be a cost component, because there are other elements of capital need? We do not have that.

The minister and I agree the old system was wrong because it eliminated the step of bringing the tenant and



the landlord together, which is one of two dozen reasons why I did not support Bill 51, and I am on record as not having supported it. I stood in the House and voted against my caucus on it. I did not buy the notion of separating the tenants and the landlord from the process. It is a principle I subscribe to.

It is unfortunate, for whatever reason, that, yes, my amendment may have some difficulty, but the concept I am trying to convey is that there may be opportunities, whether it is dealing with public safety or contemporary social challenges, to do something about our police coming in and pleading with landlords and tenants, and the fact that municipalities do not have the legal framework in which to impose them.

Second, Minister, I have been away from the table for about 40 minutes and do not wish to dwell on the document that you have submitted, which has some relevance to the motion, but as I see the stats, my limited university training on how to read statistics says this is not the total picture, it is selection, and it includes all or any renovations to an underpark. If we look at the underpark like an automobile, changing a transmission is incredibly more expensive than changing a tail-light; then surely restorative work is incredibly more expensive than is repairing of lights or exit lights that are no longer functionally within the code.

I see these stats, and without dwelling on them, you have some restorative work which we are talking about that is showing 10%. Some of this is mandatory under the building code if it is an opening and closing garage door, so frankly I think you would have been better served not to have shared this with us than for us to look at 2% to fix lights, which is not what we are talking about. We consider a lot of required maintenance, and we certainly see that will be strengthened once we get minimum maintenance standards bylaws more effectively across this province. What we are talking about are chronic problems that were not foreseen, that this province's building code said were condoned. Those building practices have fallen into disrepute, and now we are looking at the alternatives of a city coming in and shutting down a parking lot because it is no longer safe for tenants.

We disagree that the legislation has given sufficient latitude to meet those kinds of unique cases. I am sure you are not using this sheet which you have tabled with us as the basis for your justification that there is sufficient funding. As I say, it is only from having spent three days in hearings with lawyers and subpoenaing these restoration companies in order to understand the incredible expenditures involved with these buildings that I have come away with an understanding of how expensive they can be. Those were the elements that were contained. I do not wish to dwell on them any longer than that, but simply to say that we have had a very thorough airing of this amendment. It unfortunately will fail, but I appreciate the interest of the government in thoroughly discussing it today.

**The Chair:** Further questions or comments? Shall Mr Jackson's amendment to subsection 21(2.1) carry? All in favour?

**Ms Poole:** We are missing some members. Could we request a 20-minute recess?

**The Chair:** You certainly may. We will reconvene at 4:36.

The committee recessed at 1614.

1634

**The Chair:** The first thing we will do is deal with Mr Jackson's friendly amendment to subsection 21(2.1). Would the clerk read the amendment for us.

**Clerk of the Committee:** Mr Jackson moved that the motion be amended by striking out the words "to copper" in clause 21(2.1)(c).

Motion agreed to.

**The Chair:** Now we will deal with Mrs Marland's amendment to subsection 21(2.1), as amended.

Motion negatived.

**The Chair:** Now we will move to subsection 21(3). There is a Conservative amendment, I believe.

**Mr Jackson:** I am not so sure I am going to submit this. Let me just check.

**The Chair:** We will give you a few moments.

**Mr Jackson:** Give me a half a minute, please, Mr Chairman.

**The Chair:** Having looked at the amendment now, you could signify that amendment by merely voting against the government's clause.

**Mr Jackson:** Okay. If that is the Chair's ruling, I accept that. Thank you.

**The Chair:** We will then deal with subsection 21(3). I believe this is a section in the original bill.

**Ms Poole:** On a point of clarification, Mr Chair: How long is the ban on the minister's and my speaking to last?

**The Chair:** I think that was by mutual consent and I think it has just been broken.

**Ms Poole:** I thought it was only for subsection 21(2.1).

**The Chair:** Questions or comments on subsection 21(3)?

**Mr Jackson:** Could I just have that explained to me in clearer terms? "The rent officer may order maximum rent in an amount that is less than the previous maximum rent." Could somebody tell me what exactly that means, please?

**Ms Parrish:** That is a change from the current system. Under the current system if a landlord made an application to have the rent increased and tenants brought forward issues—for example, inadequate maintenance or service withdrawal—the best you could do is say, "You can't have this increase." You could not actually decrease the rent. The tenants would have to make another application if they wanted to actually decrease the rent. What we are saying now is that you could actually decrease the maximum rent so that you could have an order, if the evidence was brought forward, that not only would the rent not increase but it would actually be lower than it was when the application started.

**Mr Jackson:** Less than the previous maximum rent.

**Hon Ms Gigantes:** That is right.



**Mr Jackson:** By definition, is the maximum rent the level of statutory increase or is that the quantum of the total increase from the previous order?

**Ms Parrish:** There may have been a previous order or it may be the amount of rent the landlord is legally allowed to pay plus guideline amounts.

**Mr Jackson:** So it is the total, not the statutory, or will it allow simply a statutory increase in the previous year?

**Ms Parrish:** The maximum legal rent is the amount of rent the landlord may charge. It may have been established under an order, in which case it will be more than the guideline. If the landlord does not have a previous order, it will be the base rent he is legally allowed to have plus the guideline amount.

**Mr Jackson:** So this is the clause that says landlords cannot pass through the statutory increase if the tenants come forward with a request to have a statutory decrease? Maybe I am missing it, but that is how I thought I was hearing it.

**Ms Parrish:** If in the hearing there is evidence that the rent should actually be decreased—for example, because services are withdrawn, because there is inadequate maintenance—this allows the rent officer to make that order as opposed to simply saying, “All I can do is deny the landlord the increase.” This says that if the evidence is there—they have to prove their case—the rent can actually be decreased.

**Hon Ms Gigantes:** This allows both applications to be dealt with at one time instead of requiring that there be two applications.

1640

**Mr Jackson:** But it is the actual reduction of the application, it is not the reduction from the level of the previous order.

**Hon Ms Gigantes:** It might be a reduction from the level of the previous order, and that is noted by reference to a maximum rent.

**Mr Jackson:** That is what I am trying to get at here, because that is another issue. I would agree with you about dealing with the two at the same time, but does that then mean we could be dealing with an order from the previous legislation through this section?

**Hon Ms Gigantes:** Yes.

**Ms Parrish:** Yes.

**Mr Jackson:** My Lord. That will have big implications, will it not?

**Hon Ms Gigantes:** It will not have any more implications than dealing with a previous order under this legislation once one is made. A maximum rent is a maximum rent. This is a determination of a maximum rent, allowing two applications to be heard at the same time, one from the landlord and another from the tenant.

**Mr Jackson:** I am not debating that. I think that is a wise decision. Philosophically I am on record as saying that the more we can do when both parties are in the room, the better. That is just plain, simple efficiency. What I am trying to get at is the legal and ethical implications of an

opportunity for reduction based on a previous order, and there are other implications for that as well. To my knowledge, that is the first time that principle has been applied. No? The minister shakes her head. That is usually for a reason. I know Hansard will not always record that, so perhaps the minister might explain to me why I am wrong.

**Hon Ms Gigantes:** Because there is provision under Bill 51 for the reduction of a previously ordered rent. It has just been unusable or almost unusable as far as tenants were concerned. What we are doing here is saying we are going to put the two items together. This is not a new concept in terms of what will happen. It is a new concept only in that we are allowing both things to be considered at one point in time—at the point when the landlord makes application.

**Mr Jackson:** In fairness, are we not leaping from one set of legislation to another? I am not challenging you that from year to year under this legislation clearly there is a continuity and a consistency.

**Hon Ms Gigantes:** The concept—

**Mr Jackson:** Let me finish with what my frustration is and then you can help me clear it up. Legal counsel has suggested it is the withdrawal of service in items of that year, yet these are denigrations of services in the current-year application but they might manifest themselves in a ruling that there should be a reduction in the previous order's level. It is my understanding that has never been done before.

**Hon Ms Gigantes:** Colleen Parrish points out to me that there is nothing retroactive about the application because the application of the legislation we are dealing with under this subclause is one that is prospective. It does not affect any rents collected in the past. What it does, with the continuation of the definition of “maximum unit rent,” which we have seen throughout legislation that we have passed in this province for year after year, is say that can be varied at a point when a landlord makes an application for an increase above guideline, and it can be varied below the previously established legal maximum rent, which is the same concept—

**Mr Jackson:** Okay, now stop there.

**Hon Ms Gigantes:** No, I want to underline—

**Mr Jackson:** I am in agreement with that concept. Where I am having difficulty is moving from one legislation to the other.

**Hon Ms Gigantes:** What I think you do not understand here—

**The Chair:** Order.

**Mr Jackson:** I think we are doing quite well, Mr Chairman. I want to get this over with quickly.

**The Chair:** I am concerned that Hansard is not going to be doing quite well.

**Mr Jackson:** You are right. I apologize.

**Hon Ms Gigantes:** So do I.

What I think you are failing to understand is that the concept has not changed. In legislative terms, the definition we are dealing with of the maximum unit rent is not



changing from one piece of legislation to the other, so that there is nothing on this item that is being varied and there is no application of different definitions of "maximum legal rent."

**Mr Jackson:** I agree with that statement. What I am having difficulty with is the level of adjustment. You are adjusting a previous order's level, and that causes me great difficulty.

**Hon Ms Gigantes:** That can happen under the current legislation.

**Mr Jackson:** Under Bill 51?

**Hon Ms Gigantes:** Under Bill 51, yes. It takes a separate application by tenants. As we have agreed, that has proved almost impossible.

**Mr Jackson:** My understanding is that this is a function of when we went on to Bill 51. We went through that two-and-one-half-year adjustment period where we had to define what was the maximum legal rent. We gave landlords an opportunity to come forward and clean up any grey areas and tenants an opportunity to comment. That became a function of Bill 51.

Interjection.

**Mr Jackson:** If I had not worked with this, I would not be concerned about this issue. I am not arguing about the merging of the process. I am not arguing about a reduction as a denigration of the application before us. I have great difficulty with the rental levels that have been communicated to financial institutions and to others, to assessment courts which are establishing the amount of value for purposes of taxation and assessment based on those levels. If that becomes the ceiling of that year, the maximum rent of that given year, then we have communicated that. We are now moving to a system where we are going back and adjusting that.

If you want to take the subsequent year's application and adjust it—that is how I thought I read that. I am nervous about adjusting a previous order. I understand the difference from how Bill 51 evolved, where we said to tenants: "We guarantee you that is the maximum legal rent. Now we have in this province a floor or a ceiling"—depending on whether you are a landlord or a tenant. We did not have that in this province. You could have all sorts of rents all over the place.

**Hon Ms Gigantes:** I think Colleen could probably help us clarify this.

**Mr Jackson:** We were doing pretty good there.

**Ms Parrish:** I will try again. What this is saying is that when the landlords make their applications, they will have a maximum legal rent for each unit. Let's say it is \$500. The landlord says, "I would like to increase the rent by 9%," guideline plus 3%, and the tenants say, "Yes, but in the last year you've withdrawn parking," or "You've done this, that or the other thing and, what's more, these conditions are bad." There is a hearing and all those issues are brought to the table.

The landlord is unable to prove, for example, that the 3% he has claimed is actually justified. The tenants are successful in demonstrating that there has been a service

withdrawal and that various conditions are inadequate. So what this section is saying is that it is possible for the order to say, "Okay, the new maximum rent for the future is \$495, which is less than the previous maximum rent of \$500." It would only be for the future. All that \$500 that was paid in the past would be paid in the past. This is a consequence of putting those two applications together. So there is that possibility when you do that offset. There is also the possibility that it could be any other number. If the landlord was able to prove a certain amount and then there was a subtraction by the tenants, the maximum legal rent would go up to \$525 or something.

That is what this section is saying. It does not affect the validity of the past order and it does not affect the validity of the rent collected in the past. That was legally collected by the landlord. It does permit in future the rents to go down below what they were before to reflect the fact that the tenants are getting less than they got before. Before they got parking, now they are not getting parking.

**Hon Ms Gigantes:** In fact, that situation can arise under Bill 51. The maximum legal rent under Bill 51 can, in certain circumstances, go down from what financing companies thought or assessment officers thought or whatever. It is a matter of fact that under Bill 51 there are provisions to lower what had previously been the maximum legal rent. This is not a new concept.

**Mr Jackson:** I do not want to dwell on this. You introduced the notion of a previous order and what I heard legal counsel just say is that it does not affect the previous order, so the \$500 rate never changes. What I thought was that if there was a certain reduction, you would set your calculation from the \$500 and reduce it and then start adding your statutory increase or whatever. That has significance in terms of the calculation because you have shifted the base because it came from a previous year's order. If the base stays the same and instead of getting 9% they get 8.4%, I can live with that. I cannot live with saying that last year's order, which was the \$500 level, now is deemed to be \$485 and now we will proceed to add the 8.5%. That is wrong accounting, and that is what I wanted. From the minister's initial comments, that is the impression I got.

1650

**Ms Parrish:** There is another section that deals with that.

**Hon Ms Gigantes:** All right. Perhaps you could refer us to that.

**Ms Parrish:** I am almost hesitant to raise it. You may recall yesterday we had a discussion about a section that talked about the decrease and the increase, and you may recall that this section, which I believe is subsection 20(1), sets out all the findings the rent officer must make. It says the rent officer must first of all decide what the guideline is for the year. This is 1992; it is 6%. Then they have to say, what is the amount the landlord has requested? Then they have to say, how much should that be decreased because of legitimate evidence brought by the tenants? So what the statute currently says is this: You take the guideline and you add that to the rent. You take a justified amount from the landlord and you add that. You take the decrease justified



by the tenants and you subtract that. That is what that language, which people found difficult to deal with yesterday, means. It means you decrease that increase.

**Hon Ms Gigantes:** The landlord gets the benefit of the order in which that is done.

**Mr Jackson:** That is what I understood. That is why I could not understand bringing in the previous order and moving the base.

**Hon Ms Gigantes:** Yes, but you can end up with a figure, once you have gone through that calculation, which is below the previous base and therefore constitutes a new and lower maximum legal rent.

**Mr Jackson:** Not to be argumentative, but I would be shocked out of my shorts if there was a single building in this province that had evidence of a reduction of service that was greater than 6% or 7% or 8%, which is what the base calculation was. I would be shocked to hear of one.

**Hon Ms Gigantes:** We are not only talking about reduction of service, though I think you might find instances of that. We are also talking about whether the level of maintenance is adequate and whether the landlord shall then pay a penalty in terms of the rent increase.

**Ms Parrish:** There are also extraordinary operating cost decreases.

**Mr Jackson:** Those are increases. We are talking about where—

**Hon Ms Gigantes:** We do not want to shock you out of your shorts, but it is quite possible that these situations may arise.

**Mr Jackson:** The minister has not told me she is aware of a single case. She is just saying the legislation was written in such a way. That is what I heard.

**Ms Parrish:** There have been cases under Bill 51 in which there have been rent reductions related to services being withdrawn, and the rent has been reduced.

**Hon Ms Gigantes:** That is how legal rent has been reduced.

**Ms Poole:** May I ask a supplementary?

**Mr Jackson:** Sure.

**Ms Poole:** Thank you, Mr Jackson. He has agreed to a supplementary, Mr Chair, with your permission.

**The Chair:** I see, Ms Poole, fine.

**Ms Poole:** There is a major difference, though, with Bill 51. With Bill 51 you were dealing with tangibles. You were dealing with the cost of a service being withdrawn, for instance, or an extraordinary operating decrease. What has happened that is different in Bill 121 is that there are two new elements involved which are not tangible and which are not defined in this legislation, nor are criteria set out. They are inadequate maintenance and neglect.

I think Mr Jackson was on a very good point, that when financial institutions make loans to landlords, they make them based on certain revenues coming in and they make them based on certain maximum rents. I too have absolutely no problem with amalgamating the two applications,

but I am somewhat concerned if you are going to give the rent officer the arbitrary discretion to grant a rent reduction for undefined terms such as inadequate maintenance and neglect and lower the maximum rent without the landlord having any right of appeal on the basis of facts. To me, I do not see the fairness in that and I see a great deal of difficulty as far as landlords receiving financing is concerned. You might want to take it from there.

**Mr Jackson:** It also has implications as it relates to assessment matters which concern me even more in jurisdictions where there are going to be radical changes in market value assessment. Metro Toronto is one of them, and we are told that 25%—you know the statistics better than I—of all tenants come from this municipality. We are going to have desperate people running to assessment court to get their assessment reduced, especially the way we are treating assessment in Bill 121.

However, I think I had better understand the clause. I do not think it would move me to support it for the point I have said, but I must say I support that the processes are merged, because that was a frustration for me when, in one of my buildings, the swimming pool was shut down, what was previously a common area meeting room was converted to the landlord's use, the lockers were removed—there was a series of things. We got nowhere in terms of these being services no longer rendered, and to have a rent review officer tell us it is not germane is not a comforting experience.

However, I am very nervous about the concept of adjustments. I would much rather see penalties in subsequent years.

This begs the whole other question about rebates and the equity and fairness of those who benefit from it, but we are really peeling an onion to get to that, I suspect, and legal counsel would agree with that one. Thank you for your explanation.

**Ms Poole:** I wonder if the minister or Ms Parrish would comment on the effect on the financial institutions. The Conservatives did have an amendment, which I gather really is not in order because all they have to do is vote against this particular section, but the concern expressed was the fact that this would be a direct impediment to any landlord being able to achieve financing with respect to rental complexes. I can certainly understand that concern. I certainly do not think it is the government's intention, but as soon as you start lowering maximum rents, particularly when, as I say, you are dealing with intangibles—again we come back to that same problem of the fact inadequate maintenance and neglect are not defined nor are criteria given. I think we would certainly be much more comfortable supporting those provisions if the minister and the ministry would define those particular items.

Mr Chair, since we are bordering on 5 o'clock, perhaps we should adjourn the debate until tomorrow.

**The Chair:** That would be a capital idea, Ms Poole.

**Ms Poole:** Jolly good.

The committee adjourned at 1658.

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Wednesday 22 January 1992

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Le mercredi 22 janvier 1992

### Standing committee on general government

Rent Control Act, 1991

### Comité permanent des affaires gouvernementales

Loi de 1991 sur le contrôle  
des loyers

Chair: Michael A. Brown  
Clerk: Deborah Deller

Président : Michael A. Brown  
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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON GENERAL GOVERNMENT

Wednesday 22 January 1992

The committee met at 1014 in committee room 1.

### RENT CONTROL ACT, 1991

#### LOI DE 1991 SUR LE CONTRÔLE DES LOYERS

Resuming consideration of Bill 121, An Act to revise the Law related to Residential Rent Regulation / Projet de loi 121, Loi révisant les lois relatives à la réglementation des loyers d'habitation.

**The Chair:** The committee on general government will come to order. We were discussing at the recess yesterday subsection 21(3); Mrs Poole had the floor, according to my notes.

Interjections.

**The Chair:** This is interesting. I understood that was for public hearings, but if it is for clause-by-clause, then—

**Mrs Marland:** I was not here for the public hearings; I only started here when we started to discuss the clause-by-clause. It is just that if I am the only person here for our caucus—and sometimes because I am somewhere else it is impossible. We had this agreement that even if the minister were late, as long as the staff was here—

**The Chair:** If that is what was agreed. The only reason the Chair has not been proceeding is because we wanted to make sure all parties had an opportunity to comment on all sections.

**Mrs Marland:** I am sure I recall that correctly. I do not have any difficulty with that at all. Sometimes it is impossible to be in two places when there is one of me. I think we did discuss it at the beginning because we realized there might be times. Do you recall that?

**The Chair:** The committee very much appreciates that, Mrs Marland. We understand your difficulty and we understand that you are being very gracious in allowing us to start.

**Ms Poole:** In discussing subsection 21(3) yesterday, both Mr Jackson and I touched on one of the problems which related to the fact that if the maximum rent changes it might be very difficult in the financing area as financing companies require that level of stability. I foresee another problem. Maybe it is not a problem, but I would like to ask if perhaps Ms Parrish could comment on what I see as a problem.

I will give you a scenario where a landlord has withdrawn services. We will not touch the inadequate maintenance or neglect section because that is very subjective. Let's take an example where there has been a withdrawal of services. Let's say the landlord expands the laundry room and therefore part of the locker room, where there have lockers for tenants to keep things, is out of service. It cannot be used because it has been put into the renovation. The tenants naturally would apply for a rent decrease because there has been a withdrawal of service. Let's say the rent

review officer said this is worth \$20 a month and we will lower the maximum rent by that amount. If at a future date the landlord does increase that service or provide that service again, is there a mechanism in the legislation for the landlord to have the maximum rent brought up to the original level?

**Ms Parrish:** First of all, there is a rule that deals with temporary withdrawal of services. We may have a situation where, because they are doing renovations in the laundry room, they have temporarily put the washing machines in the locker area and then afterwards they put them all back. There is a rule that when you consider a temporary service withdrawal you consider whether it was withdrawn for some reasonable time. If the lockers were out of service for three months while they were renovating the laundry room, and then the lockers were given back to everybody, that is probably not a service withdrawal and there are later provisions that deal with that.

Let us assume a different scenario. First of all, there would not be a service withdrawal to begin with. The landlord clearly decides to take away the lockers and there is no debate about whether there is an intention to do it only while renovating. It is for ever—at that time. Three years later the landlord says: "Gee, I'd like to provide lockers." There is no provision to have a rent increase associated with that. If it was an en suite service the tenants could consent to that as an additional service or an additional en suite renovation, but if it was in the common areas there is no provision, unless the landlord can demonstrate that it passes the necessary test, which does not seem likely in the case of lockers.

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**Ms Poole:** I would be much more comfortable with this particular section if it fairly dealt with this situation. One of my concerns with it is that once the maximum rent is lowered there should be, in all fairness, a mechanism to put the maximum rent back to its original level if the particular service, or for instance the area of neglect, has been rectified. Would the ministry consider putting such a mechanism into the legislation?

**Ms Harrington:** First, I should note that you have drawn up a scenario of that situation, but I would imagine that type of scenario would be fairly rare.

**Ms Poole:** Perhaps, Ms Harrington, I could help you by drawing another scenario. We will go into those nebulous areas of neglect and inadequate maintenance. Let's say the rent review officer determines that there has been neglect and therefore there will be a reduction in the rent that will affect the maximum rent. If the landlord then rectifies the area of neglect and brings it up to standard, is there a mechanism whereby that landlord can have the maximum rent restored to its original state?



**Ms Harrington:** I think we can clarify that for you, Ms Parrish.

**Ms Parrish:** It is important to clarify that you cannot have your rent reduced as a result of neglect. Maximum legal rent cannot be reduced as a result of neglect. The request the landlord has made for an above-guideline increase for capital will be denied in whole or in part, so you cannot reduce your legal maximum rent by that. All you can do is lose your right to increase your rent above guideline.

**Ms Poole:** That is an important clarification.

**Ms Parrish:** I think what you are talking about is a case of inadequate maintenance or service withdrawal. Those are the grounds on which you can end up having your maximum legal rent decreased. All neglect can do is affect how much more above guideline the landlord can get. That is actually fairly similar to the current system where a landlord can make an application under Bill 51. They could make an application; the tenants prove ongoing and deliberate neglect in the two cases that have ever been proved and the landlord is denied the above-guideline increase, but their rent does not decrease.

**Ms Poole:** This clarification was not made yesterday when we were talking about the maximum rent, and I think Mr Jackson was talking about his concern about maximum rent being lowered.

**Ms Parrish:** Yes, I noted he made that comment but I did not have the opportunity to explain it.

**Ms Poole:** In which cases, other than withdrawal of services, could a maximum rent be lowered?

**Ms Parrish:** Inadequate maintenance.

**Ms Poole:** Inadequate maintenance, which is not defined in the legislation and which is at the discretion of a rent review officer.

**Ms Parrish:** All decisions in the statute are made by rent officers, and they all exercise discretion because it is a Statutory Powers Procedure Act hearing and that is what the Statutory Powers Procedure Act provides.

**Ms Poole:** Perhaps we could clarify it to start with. It is my understanding that the Statutory Powers Procedure Act would only apply if there were hearings and not if there were administrative review. This legislation defaults to administrative review unless within 30 days—I think that is your new and improved timetable—a tenant or a landlord applies to have a hearing. So when we are talking about statutory powers and that particular act it is my understanding—and I certainly stand to be corrected if I am wrong—that it would apply to the hearings but not the administrative review.

**Ms Harrington:** Could we clarify that?

**Ms Parrish:** There are three ways you can end up in a hearing: at the request of the tenant; at the request of the landlord; or direction from the chief rent officer, who may direct a hearing notwithstanding that nobody has asked for it when he believes the issues are such that they should be tried in a forum in which evidence can be tested in a certain way.

So if nobody wants a hearing, which may be the case for simple rebates or simple fuel bill increases, for example, then there is no hearing. But if anybody at all wants a hearing or if there is a good reason to have a hearing, it would be held under the Statutory Powers Procedure Act.

**Ms Poole:** But not if there is administrative review.

**Ms Parrish:** If there is administrative review, there is no hearing because nobody has asked for it.

**Ms Poole:** I would correct one thing that you said, in technical wording. You said it means nobody wants a hearing. I do not think that is accurate. What the terminology should have been is that “nobody has applied for a hearing,” which might be an entirely different matter. This is one reason tenant groups have asked that there be an automatic hearing instead of administrative review, and it is one reason most people, particularly in light of the fact that this government has deemed it appropriate to virtually remove the right of appeal—except in very exceptional circumstances there is an appeal to the courts on a matter of law only, so facts could not be contested in that way—many people feel it should default to a hearing. But we are in a situation right now where it automatically defaults to administrative review unless there is an application within 30 days. That, of course, assumes that tenant associations would have the resources to make that application and, in many cases, acknowledge it, even if it is right on the form. In some cases where tenants have never been to rent review, they would not even understand the process and what it means, so there is concern that the Statutory Powers Procedure Act would not necessarily be applicable in these scenarios.

**Ms Harrington:** My assistant was mentioning that in terms of the procedures we are talking about, administrative review and hearings, we will have ample opportunity to discuss this during other parts of this legislation.

**Ms Poole:** Well, Mr Chair, I am quite reassured to hear that the parliamentary assistant intends to discuss those particular areas, but meanwhile, we are dealing with subsection 21(3), which would certainly have ramifications whether it was a hearing or an administrative review.

The bottom line is that the ministry is now telling me that a maximum rent can be lowered without any recourse for the landlord, after the problem has been rectified, to revert to the original maximum rent, and I do not think that is fair. I certainly think it is a flaw in the legislation, and perhaps one that had not been brought to your attention before. Certainly, if you are talking something fairly specific like withdrawal of services, it is much easier for a rent officer to determine what withdrawal of services is. If the tenant had it before and does not have it now, it is a relatively clear-cut case.

Inadequate maintenance is very discretionary. I certainly understand, Ms Parrish, when you say the rent officer has discretion with any part of the act that is being administered, but certainly you must agree that some areas are far more discretionary than others, particularly if in some areas they are quite rigidly bound by the law and in others there are criteria set or guidelines under which they act.



In this particular case, when you are talking about "inadequate maintenance," the ministry has refused to define it. The ministry has refused even to give us broad parameters. The ministry has refused even to give us criteria for what "inadequate maintenance" is. You are willing, at the discretion of a rent officer, to allow them, with no right of appeal other than in very extenuating circumstances, to make a decision lowering the maximum rent, and then you are saying that even if the problem is rectified, the ministry is unwilling to provide a mechanism to bring the maximum rent up to where it was before. Can you, I say through you, Mr Chair, to the ministry representatives, tell me you think that is fair.

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**Ms Harrington:** I would like to say that we have gone through some of the situations we are talking about here and we do believe that what we have put forward is what we want, that is, that the rent officer may order maximum rent less than the previous maximum rent.

**Ms Poole:** In perpetuity.

**Ms Harrington:** That is correct.

**Ms Poole:** Without any recourse, in all fairness, to change it back if the situation has been remedied. I think it is absolutely outrageous. It is condemning somebody to a life sentence. It is basically saying that in a situation where there is a problem and the landlord, in the opinion of one person, this rent officer, has committed a "crime," then if that landlord redeems himself or herself, becomes a model landlord and shapes up or ships out and clean up his act, you are saying: "Well, that's too bad. I'm glad you've repented, but it's not going to do you any good."

What kind of incentive is there in this particular situation for that landlord to shape up or ship out? They have basically been told, "Whether you remedied the situation or not, you're not going to get your maximum rent back." I think it is absurd.

I know you have sections in the act to act as penalties. You have a bigger stick to bring in. But surely you do not accept that in a situation which has been remedied there should be no legal recourse for the person who has been deemed to be the perpetrator to find relief. I cannot believe that in a democratic country like we have in Canada, you are really going to say that you believe this is fair.

**Ms Harrington:** Well, maybe the landlord would think about that a little bit ahead of time and realize that the tenants do have some power now under this legislation. Also, my staff person would like to comment on your last comment.

**Ms Parrish:** I would like to talk a little bit about remedy, because I think it is important to understand that there is more than one remedy that can be exercised by the rent officer.

Certainly if this is a case in which the landlord feels very concerned or very worried, I think it is quite likely he will ask for a hearing. Therefore, there will be a hearing whether the tenants want it or not.

It is possible for the rent officer to reduce maximum legal rent or not. They can reduce actual rent or not. They

can reduce it for a temporary period and then it can go back up again. There are a number of possibilities.

If you have a situation where there is inadequate maintenance, and by the time the tenant and the landlord get to the hearing the landlord has shown that he has remedied the problem and so on, then the rent officer could affect the actual rent for a temporary period.

If, however, you have a situation where the landlord has had a long history of inadequate maintenance and you get to the hearing and nothing has ever been remedied, then at some stage I think you do have to say, look, we have to affect the actual maximum legal rent. It is not as if you are going to be dealing with a one-week period in which the superintendent was ill and did not sweep the hallways. You are going to be dealing with a sustained and lengthy period of inadequate maintenance. So there is some variability in the remedies.

I should also point out—I know this answer has not been satisfactory to you in the past, Ms Poole, but I would just comment that the ministry has indicated that it is not currently its intention to define the word "neglect" or the words "inadequate maintenance." We have, however, indicated that in the case of inadequate maintenance we are considering interpretative rules that can be prescribed by regulation, that will direct rent officers to consider certain factors. Those are not definitions, because I do not think you can define what this is. What you can do is look at factors to be considered in determining whether or not there is inadequate maintenance, and those are things we are considering in the course of developing regulations. The regulation-making authorities exist. We are planning to have a public consultation on those regulation-making authorities.

I recognize that having interpretative rules by regulation is not what you want. Everybody wants everything in the statute, but the current Bill 51 has interpretative rules by regulation and we have carried that forward into the current system.

I just wanted to clarify that matter because I think there has been some confusion about the difference between interpretative rules and definitions, and between neglect and inadequate maintenance. So I am not trying to argue; I am just trying to clarify what that position is.

**Ms Poole:** I thank Ms Parrish for that point she has just raised. Contrary to what you believe I would be dissatisfied with, I was having difficulty when I raised this matter with the minister in getting the minister to say there would be any interpretative rules or criteria or anything, even in the regulations. At one stage I said to her very clearly that my first preference is always to have it in legislation, because then it cannot be changed by arbitrary whim, but even if it was in the regulations so that tenants and landlords would be able to really have a clear idea before they prepared their case for rent review of what the criteria were, this would go a long way to satisfying me.

By the way, I do not see a lot of difference between interpretative rules and criteria. It is just a matter of terminology, I think, what Ms Parrish was talking about and what I was talking about. I am very pleased to hear that the ministry is considering this, and I would be even more



pleased to have the ministry verify that this is indeed going to happen. I think it would make a lot of people much more comfortable, rather than to leave so much broad discretion to the rent review officer—and the rent officer does have a lot of discretion. Wherever that can be not necessarily limited, but certainly guided by legislation or by prescribed rules, I would be very pleased to see that happen.

But when all is said and done, the bottom line is that even if you have interpretative rules in the regulations, you still do not have a remedy for a malefactor who has cleaned up his or her act and is now providing good service and reasonable accommodation to the tenant. I think if you want an incentive—because it has to be a carrot and stick. Notwithstanding what the ministry has said in this legislation, you are going to get far more results if you do a combination of that. You offer them a way out. What you are doing by denying a remedy after the fact is to say, “Once you have made a mistake, then you’re out.”

**Ms Harrington:** I would not characterize it as making a mistake. There is much more involved.

**Ms Poole:** I would challenge Ms Harrington on it, because we have situations where a building has been sold. I would presume that you are not going to limit it to inadequate maintenance by the current owner. Under Bill 51, tenants saw this is a real drawback, the fact that if the building changed hands, the argument for neglect went out the window because it would have to be neglect by the current owner, and in many cases the building had changed hands.

**Mrs Marland:** What is the answer to that point?  
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**Ms Parrish:** Ms Poole is quite right. The neglect does not have to be the neglect of the current owner. It is for exactly the reason she said, that you could sort of eliminate neglect by just flipping your buildings, and that would be a bad incentive.

**Ms Poole:** I have the highest regard for Ms Parrish. I think very highly of her and of her abilities, but I am most distressed when I hear her use this word “flipping.” There are cases where it is a legitimate sale: It is not a non-arm’s-length transaction; it is not from one numbered company to another numbered company held by the same family. They are legitimate sales.

If the original landlord did not take proper care of the building and you have a new landlord who goes in and says, “I’m going to improve this and I have enough money to do this this year and enough money to do this next year,” and has a plan, you are telling me that this legislation could affect the new landlord, that what the previous landlord did would come back to haunt the new landlord.

One might say that is fair enough because on the one hand the new landlord probably got the building at a better rate because it was run-down, although anybody who would say that shows a bit of a lack of understanding of the rental housing market. Buildings are sold on the revenues from their rents, and the state of the building actually has a much lesser effect than what the actual revenues are on the sale price. Still, I have a lot of sympathy for tenants who have to put up with years of neglect, and then a new

landlord comes in and has to do repairs because of that neglect, and then the tenants have to pay the price.

What I am saying is you have a scenario here where you are going to give the rent officer the ability to lower that maximum rent and even though it is now a new landlord, a good landlord who is working at bringing the building up to standard and changing things, you are going to say that new landlord can never bring the maximum rents up to what they originally were at the time he or she bought the building. I just cannot comprehend how you can think it is fair not to provide a remedy. That is what it comes down to. If there is a remedy, then everything else is fair ball, but if the rent officer is going to make these kinds of arbitrary decisions which cannot be reversed no matter what happens, which cannot be appealed, it just seems to me that something is wrong in this world when that type of thing is happening.

You are lucky, because my voice is about to give out, so I am going to give up and let some other member have a turn.

**The Chair:** Before Mrs Marland commences, I would like to inform the committee that at about 11:15 we are going to have a delegation from Korea visiting the committee, and I will recognize them at that time. We do have a little bit of background that we will distribute to members so that they can find out who is visiting.

**Mrs Marland:** Are they landlords or tenants?

**The Chair:** It does not say in the background information.

**Mr Callahan:** They are visitors.

**Mrs Marland:** If they are landlords or tenants, they are going to think they have arrived in Russia.

**Mr Callahan:** Russia does not exist any more.

**The Chair:** I am sorry I mentioned it.

**Ms Poole:** On a point of order, Mr Chair: Sometimes on this committee there has been some acrimony. Perhaps, in view of the fact that we have international visitors, it might be incumbent upon us at 11:15 to behave, for a change, as parliamentarians, rather than let our true natures come out.

**The Chair:** Thank you for the advice, Ms Poole, but I think they are here to discover how the parliamentary process in legislative committee works—

**Mr Callahan:** I hope they were not here last night.

**The Chair:** —so I would not want us to contrive our behaviour to give them a false sense of what goes on.

**Mrs Marland:** Mr Chairman, I think that before the delegation arrives we should decide which fairy story Mr Mammoliti is going to recite for them. I think the Three Little Pigs or Robin Hood. Do you have another one we could give them this morning, George?

**Mr Abel:** I like the Three Little Pigs myself.

**The Chair:** Mrs Marland, could we speak to subsection 21(3)?

**Mrs Marland:** Yes.

**Ms Poole:** Why have we not heard about the big bad wolf yet? I have been waiting for it.



**Mr Callahan:** I think we have driven Hansard crazy.

**The Chair:** Order. On subsection 21(3), Mrs Marland.

**Mrs Marland:** Thank you, Mr Chairman, for giving me the floor.

**Mr Callahan:** He could have given you worse than that.

**Mr Mammoliti:** Maybe the Bugs Bunny/Road Runner Hour.

**Mr Abel:** See, you got him going.

**Mrs Marland:** You choose it, Mr Mammoliti, that is fine.

Mr Chairman, it is very difficult to sit here and listen to the answers that both the parliamentary assistant and Ms Parrish are giving to the questions from the Liberal opposition critic for Housing, the member for Eglinton, Ms Poole. I think that a lot of the questions she has asked were the questions that I was going to ask, and when I hear the answers I just cannot believe it.

I am sorry if a little of this is going to be repetitive, because I am wondering if there is some other way that either the parliamentary assistant or the staff are able to explain how they can possibly believe that in the 1990s in Ontario we can pass this kind of legislation. We can use words to describe this legislation like "draconian" and "regressive." You can use whatever you want, but basically this kind of legislation, and particularly this individual clause, is totally unjust.

If there was some access to appeal the rent officer's decision, then I think even that would open the door to at least some justice, because you cannot order anybody to do anything in this province without a right of appeal. Here we are saying that, "The rent officer may order maximum rent in an amount that is less than the previous maximum rent." Why do we not even say it the way it is intended? Why do we not just say, "The rent officer may order a reduction in rent"? Why do we even use this ridiculous phraseology? Why does it not say, "The rent officer may order a reduction in rent"? What is wrong with putting it that way so at least the poor souls who are already going to have to spend thousands of dollars, as I said last week, for lawyers to interpret this act might be able to read one of the most pertinent sections of this bill a little more simply? Why can you not put it that way?

**Ms Harrington:** That would be okay with me. It seems fairly straightforward, what is written there.

**Ms Parrish:** I guess I want to start out with sympathizing that the concept of "maximum legal rent" is a difficult concept. The reason we specify that it is maximum legal rent is because the landlord may be charging a rent which is less than the maximum legal rent.

**Mrs Marland:** Excuse me. It does not say "maximum legal rent" in here. It says "maximum rent."

**Ms Parrish:** Yes, you are quite right. Maximum rent is the legal rent that the landlord is allowed to charge, but the landlord may not be charging maximum rent; he may be charging actual rent, which is less. If you said just "rent," then people would say, "Does that mean the actual rent which the landlord was charging, or is that the legal

amount that he could have charged, which is the maximum rent?" This is trying to clarify that it is the maximum rent that could be affected.

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**Mrs Marland:** I wish I had not asked. It gets worse. All right, how do you establish whether the landlord is not charging the legitimate previous maximum rent, that he is charging something less than that? Maybe there has not been an evaluation of his building and maybe all the individual units have different maximum rents potentially. How do you establish what the previous maximum rent could have been?

**Ms Parrish:** There are several ways that could be established. One is on the basis of the previous order and, if there is a previous order, we do not go behind it. We accept the order, that that is the previous maximum rent.

**Mrs Marland:** Right.

**Ms Parrish:** The landlord may also have registered his rents, and if he has registered his rents, and there has been no intervening order, we simply add the statutory guideline in each case, which is the maximum which the landlord could take. So, if we had an order in the past that said the legal rent is \$500, and if three years pass, we would take \$500 and we would add the statutory increase which the landlord is entitled to take.

So, they may have an order; they may have registered their rent. If neither has happened, then there is a process of what is called base rent validation in which the landlord says, "These are my rents and this is what I am charging," or, "This is my maximum rent and this is what I say." Then the tenants, if they are of a different opinion, will dispute it and that will be decided at the hearing.

**Mrs Marland:** What kind of hearing?

**Ms Parrish:** The hearing which the landlord or the tenant has requested. If no one has requested a hearing, then there would be a base rent validation done by the rent officer. If the landlord anticipated that there was going to be a lot of dispute about what his base rent was, he would probably be asking for a hearing. Otherwise, if no one disputes what your base rent is, then we assume that your base rent must be what you say it is and then we establish the maximum legal rent and do the calculation from that time.

As we move through the process of registering more and more rents, there will be more and more rents that are established through a process of registration. Most of the large buildings in the province, for example, are registered now.

**Mrs Marland:** When you say most of the large buildings are registered now, am I correct in the figure that I have been using, that perhaps out of 150,000 landlords only 11,000 are buildings of more than seven units?

**Ms Parrish:** I do not know, Mrs Marland. I can undertake to find that out.

**Mrs Marland:** Okay, I would appreciate having that confirmed or denied.



**Ms Parrish:** You want to know the total number of landlords and the total number of landlords who are landlords of seven and up buildings?

**Mrs Marland:** Yes, please, because you just said that most of the large buildings now have the rent registry established for them, and I am wondering what that represents of total rental units in the province.

**Ms Parrish:** Of total rental units, it represents about half, I believe.

**Mrs Marland:** So about half may be under rent registry now. Just a ballpark, about half might be under rent registry.

**Ms Parrish:** Yes. Seven and up buildings were required to be registered under Bill 51.

**Mrs Marland:** Right, which probably follows through with what I have been saying about the small landlords then, because if we say, to use the minister's figures—I have not got the ministry figures here this morning, but I know the minister has said about 40,000 people live in rental accommodation. No, pardon me, 40% of the Ontario population lives in rental accommodation. Then what what we are saying here is 40% might be four million people. Since we know what the rents are for two million people, this means we have got two million people left today for whom we do not know what the maximum rent might be if there is no previous order or no registration of those rents through a rent registry.

So subsection 21(3) is a bit of a pig in a poke, is it not, until the registry is up and running, if there has been no previous order and the rent registry is not applying to those units. When you say that if there is a discussion or a dispute on what the maximum rent is then it can go to a hearing, what kind of hearing are you referring to?

**Ms Harrington:** The same hearing process we have been describing throughout the legislation.

**Mrs Marland:** Which is what?

**Ms Harrington:** Ms Parrish, would you like to give her some details?

**Ms Parrish:** This is just one issue that would be resolved like any other issue. A hearing would be before the rent officer, which is the system that is established pursuant to the Statutory Powers Procedure Act, and in addition, this bill has, in later sections, a series of procedures and procedural rules that are in addition to those set out in the Statutory Powers Procedure Act.

**Mrs Marland:** Let me be very clear. If there is a debate, subsection 21(3) says the rent officer shall make an order. Then you are going to have a dispute between the rent officer and the property owner possibly, and then it is referred to a hearing, is what Ms Parrish said. Surely to goodness you are not saying that hearing is conducted by the same rent officer who has issued the order?

**Ms Parrish:** The rent officer has a hearing and he decides. The landlord is coming to the hearing and saying, "I want to increase my rent above guideline to pay for this capital repair." The first question the rent officer has to—

**Mrs Marland:** Excuse me, I do not want to interrupt you, but I am only dealing with subsection 21(3), which is

dealing with a decrease, so we are not dealing with guidelines here.

**Ms Parrish:** But the landlord only got to this because he asked for this hearing to increase his rent. There are later provisions that deal with tenant-only applications, but you have to have gotten to this hearing because the landlord initially asked for an increase. That is how the landlord got there. At that time, the landlord says: "My current rent is X. I want to add the guideline, plus 3%," let's say. At that time, the tenants may say, "Well, the landlord wants to have all of these capital increases and he may be able to justify them, but we, the tenants, also point out that he has withdrawn services within the last year and we want a reduction for that." So that is how the landlord got to this situation.

The first dispute the landlords and the tenants might have at this hearing would be about whether the rent the landlord was currently charging was legally justified. So the first issue you have to decide is what is the rent now? The second issue is how much more can you increase it? It would be the same rent officer who would decide everything. What is the rent now? How much can the landlord increase it? What can he justify? He justifies blah, blah, blah, and then the rent officer hears from the tenants and they talk about their laundry room that is gone, or whatever, and they make all the adjustments in one hearing.

1100

**Mrs Marland:** What about the landlord who is not applying for a hearing because he is not applying for an above-guideline increase? The landlord is just going to go along with whatever the legal increase is for that given year. So there is no hearing. Can the tenant then ask for the decrease and that generates a hearing?

**Ms Parrish:** Yes, the tenants can make their own application.

**Mrs Marland:** In your response to Ms Poole, you said that the decrease, once it is granted, for whatever reason, is there for ever. That then becomes the maximum rent.

**Ms Parrish:** Yes, they can subsequently increase based on guideline or based on a new application if they can meet the test from the statutes.

**Ms Harrington:** Maybe I could clarify that. Obviously, the rent is going to be reduced because of the state of that building, and that is the right we are giving this rent officer, to make that decision. The state of that building is what we are talking about.

Now, if the building is sold or improved, then the amount spent on the building can be put through. If there are large amounts spent or necessary capital repairs, the rent can be increased in the usual way, which is the 3% above-guideline. That is the way a building, if it is improved, can have the rents raised. That is the way the system works.

**Mrs Marland:** So if the rent is \$500 a month and this poor soul gets the rent reduced to \$400 a month based on the fact that an elevator is out of service for six months, are you really saying that this \$400 a month then becomes



the maximum rent, no matter when that elevator comes back in service? Is that what you are really saying?

**Ms Harrington:** I am not making those judgements, no. That is up to the rent officer to look at. He listens to the landlord, who brings forward evidence. There is a process. We are only giving him the ability to do that.

**Mrs Marland:** I know. You are giving the ability to this person we do not even know about yet, what training they are going to have or what qualifications they need to get the job in the first place. It is such an incredible copout to have this legislation say, "Well that is going to be up to the rent officer." Although I have asked this question repeatedly, I am going to have to wait until we get down to section 116 to find out who that person is and what his qualifications are.

But let me just say this: when the rent officer has made the decision that this rent is now \$400 a month instead of \$500—I am not getting into how is he going to do it, because even you do not know how he is going to do it, which is the most ludicrous part, and it is indefensible for a government to be doing what it is doing.

**Ms Harrington:** Mrs Marland, if what you are saying—

**Mrs Marland:** No. Let me just give you the example again. The rent officer has made a decision that this rent is now going to be \$400 a month, for whatever reason; I just gave an example that maybe the elevator is out of service for six months. I know that in a home for the aged in my riding—it is not private sector, before you start thinking it is some cheap so-and-so who has neglected it, as the attitude of this socialist government is about anybody in the private sector. An elevator part had to come from Europe. It could not be flown; it had to come by ship.

**Ms Harrington:** I heard that.

**Mrs Marland:** That happened to be in a public sector home for the aged. It is quite possible that an elevator in a privately owned apartment building might be in the same situation. So instead of two elevators, they have one. As I say, it is not an example I am pulling out of the air, it is fact. But in any case, this omnipotent rent officer can make all of these decisions without any appeal by the poor individual who has to accept his judgement and his decision. We do not even know if he is capable of making that judgement.

So the rent gets reduced to \$400 a month and, to use Ms Parrish's term, the legal maximum rent is now \$400 a month. I want to be very clear that what you are saying is that this is then the legal maximum rent for ever, and that the only way this landlord can increase the rent again is by the legal allowance on an annual basis through the guidelines and the other little clauses that let them have above-guideline increases.

Even though the elevator is back in service or, as in Ms Poole's example, the laundry rooms are back in service, or whatever it is, even though the cause of the reduction has been remedied, surely to goodness you are not going to say that the rent has to stay at that lower figure when the cause of the reduction has been remedied and is no longer a factor for the legitimate decrease in rent, as you call it. Surely this is not what you saying in this bill?

**Ms Harrington:** Maybe I will ask Ms Parrish to comment as to whether the situation of the elevator part might lead to such a situation as you are talking about.

I just want to say that from what you have discussed in the last five minutes, I would be led to conclude that you do not believe that tenants should have the right to have their rent reduced at all, no matter what the state of their building is. Really, you are then giving tenants absolutely no power whatsoever; they have to endure whatever happens.

A year ago, I went out to Parkdale and I went through some of the buildings there. One was almost like a ghost town; it was so scary. It is a huge complex of two buildings called West Lodge.

**Mrs Marland:** That is absolutely not what I am saying.

**Ms Harrington:** What I am saying is that the rents should be in line with the condition of that building. Now, if improvements are made, if the building is sold and money is put into it, then obviously the rents can be raised. But if that is the state of that building, the tenants should have some access to have the rents reduced.

**Mrs Marland:** So we do not have on the record what you are saying you heard me saying, I am not saying that, Ms Harrington.

**Ms Harrington:** Well, it sounded like it.

**Mrs Marland:** It may have sounded like it to you, so I am going to make very clear what I am saying. No, I do not believe that where a building is in an appalling state, tenants should not have some rights. But what I am asking you—

**Ms Harrington:** Would you believe they should have their rents reduced? That is what this section says.

**Mrs Marland:** No, excuse me. I did not interrupt you; just let me finish. What I am saying is that where—

**Mr Mammoliti:** You have just said it twice.

**Mrs Marland:** If you wake up and interrupt, Mr Mammoliti, you had better sit in and follow all the dialogue here. I am getting a little cross.

Interjections.

**Mrs Marland:** Mr Chairman, I am waiting, and I did wait until the parliamentary assistant finished. What I am saying is this. If it is an example such as she gave, where a building is in a horrible, deplorable state, of course I am not saying that tenants in that—

**Mr Callahan:** On a point order, Mr Chair: I distinctly heard—I do not know what his riding is—Mr Mammoliti say that Mrs Marland lied. That is clearly not parliamentary and I think he should withdraw that comment.

**The Chair:** As you know, Mr Callahan, the Chair can only rule on comments that he hears directly. I did not hear Mr Mammoliti make any comment to that effect. If I had, then I probably might agree with you. Mrs Marland has the floor.

1110

**Mrs Marland:** I do not think any of us are interested in what Mr Mammoliti says anyway, so it is irrelevant, as far as I am concerned.



If a building is in a deplorable, deteriorating state, then I do not think tenants need to tolerate that kind of condition. What I am asking this parliamentary assistant and this government is, if a landlord is mandated a decrease in rent because of a problem—I only gave the elevator as an example. I am not a landlord of residential rental accommodation so I am not in a position to have a whole myriad of examples of what kinds of situations can develop in these buildings that may cause this marvellous wizard, the rent officer, to reduce the rent. My question is very direct: Once whatever caused the rent to be reduced has been remedied, why are you then saying rent increases from that point on will have to stay within the legal annual guideline limit?

Is that what you are really saying? Even if it is a very expensive remedy and consequently the reduction in service is measurable and the rent officer says: "No way should you be paying that much rent. You are paying \$500 now; we are going to reduce it to (48\$)—this is the example I gave you, and in that case, are we not talking about a 20% reduction? I am not a mathematician but I think \$500 to \$400 is about a 20% reduction. Are we saying that for them to recover the 20% reduction they are going to have to go through the guideline every year, and anything above the guideline is going to go through all the other equations legally allowable in this legislation? It may be years before they ever get back to the base rate of \$500, let alone other legal limits they could have had above \$500.

If you are so sincere about the rights of individuals, as the socialist party you are, surely the rights go to everybody. The rights go to property owners and the tenants. Yes, if the place is deplorable, dilapidated and deteriorating the tenants should have those rights, but surely also when the landlord remedies the cause of the rent reduction, the rent could at least go back to what it was at the time the reduction was granted. That is the question and that is what I said. I did not say tenants did not have any rights.

**Ms Harrington:** So you agree that tenants should have the right to have their rents reduced, which in fact this section says. That is exactly all it says.

**Mrs Marland:** I do not agree with this legislation because of the authority given to one individual without a right of appeal. You can devalue my land in this province by downzoning it under the Planning Act, but I have a right of appeal. If I own land, I would have a right of appeal to the Ontario Municipal Board. It is incredible to us that such a strong, powerful statement is made in this section and it is with one individual. At least when your property is downzoned and consequently devalued in this province, a bylaw has to be passed by a municipality; a municipal council votes on it; a number of people look at it. In this case, we have this one wizard, this one person, the rent officer. It is hard to believe, as I say, that people think you fight as a party for the rights of people. Just tell me if you would consider, where the remedy has been provided to the cause for the rent reduction, having the rent revert to what it was at the time the judgement was made by the wizard.

**Ms Harrington:** Oh, let's not be too facetious.

**Mrs Marland:** The rent officer.

**Ms Harrington:** I certainly am glad to hear you care about people's rights, the tenants' as well as the landlords'. I think the easiest way to characterize this is, yes, the tenants do need some rights and I think everyone, including the opposition, understands that this is probably the reason behind this particular part of the legislation: to give the tenants that empowerment over their lives; over where they live; to have some kind of ability to deal with the system and landlords.

I believe very strongly that the balance was not equal and we are trying to bring that balance about in a more equal way. It makes plain, ordinary sense that if a building is in this state the rent is lowered, and that rent can be put back up if those things are remedied. It will cost money to have it remedied and if the above-guideline amounts are spent for necessary capital repairs, then the landlord can put through above-guideline increases.

**Mrs Marland:** Above-guideline increases within the parameters of the legislation. I have the option of moving into two apartment buildings. One building has a laundry room on each floor for the tenants and it may have a swimming pool in the basement. I have a building like this in my riding. The building beside it does not even have laundry rooms any more and it has never had a swimming pool. I decide it is affordable for me and my standard of living and I would like to move into the building with the laundry rooms on each floor and a swimming pool, so I elect to pay a higher rent and move into that building. Now, if my landlord comes along and decides there is so much vandalism to the laundry equipment that he is shutting down those laundry rooms on every floor and is going to fill in the swimming pool because it is going to cost him too much to repair it—it is an older building in this particular case and the pool is presenting problems. He elects that he has no options because under the rent controls he cannot afford the major cost to repair the swimming pool, so he decides to close it and fill it in. I think I am then entitled to a reduction in my rent.

If the landlord decides that whatever the cause of the reduction is remedied and I get a reduction this year because I am without those facilities, and maybe he decides that next year he is going to reinstate the laundry rooms and the equipment in them and so forth—

**Ms Harrington:** Sorry, Mrs Marland, have you finished your question?

**Mrs Marland:** No, that is why I stopped, because I know you cannot listen to both of us at once and I know you have to get the advice from Ms Parrish, so I respect that.

So I get the rent reduction this year. As a tenant, if the landlord remedies the problem in my building, I would be quite happy to have that rent revert to what it was when I originally agreed to rent in that building with those services available. Once the rent officer has made that decision for the rent reduction, you are saying, if we understand this, that the only way he can get it is through the annual allowable increments under the bill and the above-guideline limit exceptions that he can apply for, and



that may be nowhere near the reduction allowed the year before.

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**Ms Harrington:** The reduction would correspond with the problem and the state of that building.

**Mrs Marland:** Would you say that again?

**Ms Harrington:** If the rent was reduced, it would correspond to the problems or the state of bad maintenance in that building. Why would you say it should be reverted to what it was?

**Mrs Marland:** My example was not about bad maintenance in the building at all.

**Ms Harrington:** It was reduction or withdrawal of services.

**Mrs Marland:** Yes, and I would like the answer to the question I placed. I asked, and I think very clearly, about something that is reduced in service and facility, for any number of reasons on the property owner's part, yet when I went in there I agreed to pay \$600 because it had all these facilities.

Do you really want this bill to say that when those facilities come back and the tenants are willing to still pay the \$600 after they have had a reduction to \$500 or whatever it is—the numbers do not matter here, it is the principle we are trying to deal with. I am trying to find out if you really believe, or do you understand, or is that the justice—is that what you want this bill to say, that once there has been a reduction, that is it; if the cause of the reduction is eliminated then the rents cannot go back to where they were?

**Ms Harrington:** If a landlord in Mississauga were to take away the services of the pool or the laundry room, he would think about those services very clearly before he withdrew them. If he no longer wanted to offer laundry services or a pool, then a year later he is not going to decide, "I am going to now make a new pool for these people." I think you have to decide what kind of building and what kind of service you are going to provide.

**Mrs Marland:** I am sorry, you cannot get out of it this way. Let's give another example. I am the landlord this year who decides I really cannot, on my present income, afford to replace all the continually vandalized laundry equipment on each floor. This has happened in the building I am speaking of. It is no fault of the tenant and no fault of the landlord. People have gained access to this building and vandalized the laundry equipment because they are looking for money primarily, then they go nuts and it is just not repairable equipment.

I am the landlord this year and I decide there is no sense continuing to give this service to my tenants, although the tenants in my building are paying more because that service existed. Okay. The rent officer grants a reduction in rent because that service is no longer available. Fair enough. Next year there is a new owner in that building. You said if the landlord decided to do away with it this year, it is not likely he would decide to bring it back next year. I am saying we cannot presuppose what an individual

landlord would do, nor can we presuppose what a new landlord might want to do.

Your legislation applies to whoever owns the building, so we cannot argue it the way you are arguing it. You cannot say it is not likely he would do this. In fairness, it does not matter who the owner is. What matters is what the building consists of, what the conditions were when the tenant signed a lease in that building. That tenant decided, yes, I want to live in that building because it has the things I like and the things I want. It has the living environment that appeals to me. If that changes there is a tremendous reduction in the conditions for that tenant. Yes, there should be a right if a service has been provided and then withdrawn.

**Ms Harrington:** It is very good to agree. I appreciate that.

**Mrs Marland:** I am not agreeing on how it is done, I might add, because I think this arbitrary one-person decision without right of appeal is bizarre, at best. Totally unjust. But tell me if what you are actually saying in this bill is that it does not matter if the current landlord puts the services back in; you are still not going to establish the base rent, the maximum rent, at where it was except through the steps the guideline limits and the above-guideline application takes.

When you answer that, could you also consider whether it is possible for a landlord in those circumstances to apply for an above-guideline limit to bring it right back to where it was? If there is a vehicle in there for the landlord to achieve that? Maybe the decrease has been 20%, \$500 to \$400 a month. If it pertains to the individual cause and the individual cause is remedied, in other words, with the evidence that is given for the reduction, if it can be proven in front of the rent officer that there is now evidence that the particular cause has been remedied, is it possible that you would give them the 20% increase back and restore rents to where they were?

**Ms Harrington:** I certainly understand what you are saying. I think you will appreciate, after this last discussion, that what we are in effect doing is giving tenants some power. Therefore, the landlords will consider very carefully trying to either maintain the service or maintain the building. This is going to be a very powerful tool, and we believe it is going to make some significant change in the lives of tenants in this province. That is why this is here.

I would like to go a little further to your real question here, and I think we are just going to have to agree to disagree. Fundamentally, the reason for this whole legislation is stability in the rents, stability in the lives of tenants so that they are not thrown out of their apartments because they cannot pay. Certainly in the type of economic climate we have people are not getting 6% raises. Here we have legislation that caps the rent at 6%, and 9% at the very maximum.

What we are saying is that if a tenant moves into that building when the rent has been reduced to \$400, that is the situation. That is what he expects to pay and that is the condition he finds the building in, without those particular



services that were taken away, and he moves in on that assumption. That is the situation he finds and that is the maintenance level of that building he finds.

We do not believe there should be large increases. What you were saying is that if the rent reverted back to the \$500 level, that would be an increase of 20%. We are saying, no, we will not have that. I guess we will just have to agree to disagree.

**Mrs Marland:** What you are saying, then, is that you do not really believe in the rights of tenants, because what you are saying is that in a commonsense approach to this, the tenants who will move into a building in one year at the reduced rent then have the power to control the environment for those tenants who may have been there five or 10 years. What you are saying is: "Okay, the rents are reduced; now that's what the rents are," and there is no incentive for—

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**Mr White:** On a point of order, Mr Chair: I am sure Mrs Marland would not mind the brief interruption. I would like to, through the Chair, welcome the delegation from Korea. Their new venture into democracy at a regional and local level I am sure is a major challenge for them. I hope we can offer them something in terms of our own processes.

**The Chair:** That of course was not a point of order, Mr White, but I would convey the welcome of the committee here today to the members of the Seoul council. I hope you will enjoy your stay here and learn something about the parliamentary process as we go through Bill 121, which is a rent control bill, clause-by-clause. Welcome here today, gentlemen.

**Mrs Marland:** Mr Chairman, I realize it is the privilege of the Chair to officially welcome delegations. I do not know if anyone else in this room has had the privilege of visiting Seoul, but our son was competing in the Olympics in 1988 in rowing and our family spent two weeks in your beautiful city.

Not having any idea what that visit would be like or what the city would involve for us, and not having any experience before with the Korean culture and the people who live, in this case, in South Korea, I welcome the opportunity to say to you from the bottom of my heart that the feeling we had when we were in your city in your beautiful country was an experience that all of my family will remember for ever. You were very warm and very gracious. It is a feeling that words really can hardly describe, because it was a joy.

We were incredibly impressed with the organization, of course, that you gave to the 1988 summer games and impressed with the tremendous standard that you have for your families and your children through education and the standards of behaviour and caring towards each other and to visitors to your country. I wish sincerely that we could emulate what we received in your country when we were there, so welcome.

**The Chair:** Thank you. I pause just for a moment and maybe the interpreter would like to convey to members of the delegation a little bit of what was said.

**Dr Hwang:** Thank you, Mr Chairman, and your honourable members of the House and committee members.

**The Chair:** Perhaps if you would come up to the microphone please.

**Interjection:** Then it might be recorded.

**Dr Hwang:** As I said, thank you very much for your warm welcome. As she said, Koreans are warm but I think you are warmer people than Koreans. We as Korean councilmen really enjoy and are learning a lot about the democratic process and local politics. I hope we can get a lot of information and knowledge about local government operations.

On behalf of our delegation, I thank you very much for that. I will have to interpret what she said, what you said and what Mr White said to my group, if you can excuse me. Thank you very much.

[Remarks in Korean]

**Mr Owens:** Thank you, on behalf of the city of Scarborough. I represent the riding of Scarborough Centre. We have a very vibrant and hard-working Korean community. I would like to welcome you on behalf of myself and that community. The most recent municipal election saw one of the members of the Korean community, Dr Raymond Cho, elected to the council of Metropolitan Toronto. I know that Dr Cho works extremely hard and represents his constituents at a very committed level. On behalf of Dr Cho and myself, I would like to welcome you to this country and to this Legislature.

**Mr Morin:** I just want to say that I had the pleasure of living in Korea in 1953 when I was with the armed forces, with the Royal 22nd Regiment, and I was close to a place called Uijongbu, quite a few years ago. I notice some of the members are probably the same age as I am and maybe we met during that time, I cannot recall, but I would like to welcome you and I hope some day I will have a chance to go and visit the area that I lived in for one good part of my life when I was extremely young. It is nice to meet you.

**The Chair:** Thank you. The purpose of the delegation is to watch us at work, so let's get back to work. Mrs Marland.

**Mrs Marland:** Thank you, Mr Chairman. The parliamentary assistant was saying that once the rent has been reduced for whatever cause, the new tenants' rights must be protected, because although the current tenants at the time of a reduction benefit from the reduction and had been willing to pay the higher rent because that was what their contractual agreement was through their lease, they now have a lower rent. But your concerns seem to be that new tenants moving in now move in at a lower rent. They come in, they pay a lower rent knowing what the existing services are. That is what she said.

If what you want to see is a reduction in services and therefore a reduction in rent in apartment buildings across this province, obviously we have a disincentive for the cause of the reduction in rent to be remedied. Why would anybody spend money removing the cause, or why would anybody spend money providing a remedy to whatever the reduction in services was if they only stand to have their



rent increased to recover that work under the annual guidelines as permitted through this legislation?

I suggest you are putting the rights of the new tenants who move in at the lower rent, albeit with reduced services, ahead of the rights of the majority of tenants who are already in that building, because obviously you are not going to have even a 25% turnover in most apartment buildings in a year. You have people who live in this building who went in with leases where different facilities were available to them. They went in willing to pay the \$500 a month—this is just as an example—because they had these facilities. The laundry rooms on each floor and/or the swimming pool, or whatever it is, now no longer exist. The rents are reduced for everybody.

1140

You are saying that is okay. You are happy to allow that standard of living in that building to be reduced, because the things I am talking about are not work order things. You cannot require under a work order that laundry rooms be provided. You cannot require under a work order that a swimming pool be provided, but I have rented my apartment in there because those were the things that I liked, and now you are saying: "You may have been there three or four years, and sure, you wanted those things and they are gone. You don't have them any more and we think you're entitled to a lower rent." You are arbitrarily deciding for me how much rent I want to spend on my living environment. It may be more important to me to have those facilities and pay a higher rent, because I have already made that choice. I have already made the choice on building A rather than building B that did not provide those facilities. You are saying that: the new tenants who have moved in, knowing that those were the existing standards of service in that building and it is a lower rent, cannot be subjected to a higher increase.

It is rather interesting that this argument really reverses to the argument I gave yesterday about giving 75% of the tenants an option to vote for an improvement. In this case, we are dealing with a situation where we are not voting for an improvement, we are simply looking at maintaining a standard that was in the building.

I suggest to you, madam parliamentary assistant, that your answer is a disincentive to have those causes remedied. If you are happy to reduce the living environment for tenants in this province, I want to tell you that I am not, because it is unjust for a government to decide what tenants want to spend their money on. If they choose to pay more rent because they can afford to and they live in a better place with better equipment, so be it. That is the right of a human being in this province in 1990, I would respectfully suggest. You want to say, "They were granted a rent reduction and now, for new tenants in under that lower rent, we can't suddenly revert it back to what the rent was because the problem has been corrected."

**Ms Harrington:** I would like to ask my assistant to comment on the number, say, of cases, or the legitimacy of the types of cases you are talking about in rent reduction and what the majority of rent reduction cases might be.

I would like to also mention that there is another way of looking at the world. I think you will appreciate that there are many tenants out there who have in effect been paying much more than they should be with regard to the state of their buildings, and these are the buildings I have been in that I was telling you about, and I am sure there are many in every riding. One could even possibly say that these people have been exploited. They had no recourse to get their rents lowered. In fact, this has been in newspaper articles over the last decade, that certain buildings have been what we call "bled." The money has been taken from those buildings. The money has not been put back in for maintenance, for capital repairs, and these tenants have lived in those buildings because there has not been the choice. That is the reality of the type of world we are living in. You may be seeing certain parts of your view of the world, but I am saying that there is this other situation, and I wanted my staff person to comment on the numbers and types of those cases in which she believes there will be rent reductions.

**Ms Parrish:** There are provisions in the statute that make it very clear that when you look at service withdrawal, it has to be a permanent service withdrawal. Certainly cases where one elevator out of five is out of order are not likely to cross those kinds of service withdrawal thresholds. If, however, you have a situation where the landlord has clearly withdrawn the service and intends to withdraw the service, then the act provides for compensation by lowering the base rent.

I have to say we did look, at a staff level, at whether it was practical to think up some system about getting it back if you wanted to get it back in the future, but then you have to think about how that would actually work. Would you want to have situations where landlords would come in and say, "Five years ago I had this, or seven years ago I had that, and now I want to put it back in the building"? In the meantime, people have moved into the building on the understanding that this was the cost, and they may have been in the building for a long period of time but they may be seniors on fixed incomes and they may have made a decision to stay in the building because that was what the rent was.

In the rent control system, the worst that could happen to them would be that the rent would go up by guideline plus 3%. Now the landlord could reach back in time, maybe over many years, and say, "Ah ha, but now I want to give back some service," which maybe none of the tenants want. They all have laundry machines in their units or have made some other arrangement and they are now going to have to have this service back. They had not contemplated that they would get it back. They have no ability to say they do not want it, and all of a sudden here it is.

At some level, in order to be fair to all landlords as well and have a system that treats them the same, once it is clear that it is a permanent change in circumstances, then the rent is reduced and the landlord can increase from there. You cannot have one group of landlords who can add services other landlords cannot add, based essentially on historical anomaly, because the purpose of the statute is



to control the rate of increase and to cap that. I mean, that is why it is rent control as opposed to rent review. I certainly understand that is not your philosophy, but it is consistent with the purpose of the statute that there should be control going up.

The only time you get this kind of reduction in rent is if there is a permanent circumstance and there is no intention in the foreseeable future to bring back these services. At that time I think the act responds by saying the rent comes down. If in future the landlord wishes to add services or wishes to add other improvements, he can do so within the parameters of the statute, just as all other landlords can make improvements or add services.

**Mrs Marland:** Ms Parrish, you do not understand my philosophy. You said, "I certainly understand your philosophy." I would like to tell you that you do not understand my philosophy.

**Mr Mammoliti:** Everybody understands your philosophy.

**Mrs Marland:** My philosophy is that I believe in equity for every citizen in this province—every citizen, tenants and landlords alike. That is my philosophy, and that is unequivocal on my part.

Going back to Ms Harrington's comments, you said we do not have very many examples of applications for rent reductions. I have forgotten how you said it, but you said something about there would not be many examples. You were talking about numbers. I think you said they could not anticipate that there would be a lot of cases where there would be rent reductions under the guidelines that are out here. We will have to wait for Hansard to see exactly what you said, but in any case you gave the inference that there would not be a lot anyway.

1150

**Ms Harrington:** I was referring to the types of examples you were giving where there was a temporary reduction of service and then the landlord would decide to put that back in. I was trying to ask my staff how significant that would be in relation to this whole portion of the act.

**Mrs Marland:** Right. Okay. So what you were saying was that there would not be very many, in all likelihood.

**Ms Harrington:** Of that temporary type of reduction.

**Mrs Marland:** What I am saying is, why does it even matter whether there are a lot or a few?

**Ms Harrington:** To put it in perspective, really.

**Mrs Marland:** To put it in perspective. But to put it into fairness and justice, if there only were one, do you want to treat one person unfairly or one tenant unfairly or one landlord unfairly? The numbers do not matter here. Everybody in this province has an equal right.

You say there are tenants who have been paying much more than they should have. You said there are tenants who have been exploited; there are certain buildings that have been bled. I have do not have any argument with that. There are. There are tenants in this province who have been exploited and there are buildings that, to use your word, have been bled, where there has been maintenance reduction and so forth—no question.

But are you going to decide that this legislation is going to set a standard where what we are saying is that there is no recognition for the fact that the majority of property owners in this province are good business people who are fair to the people they sell their business to, the people they render a service to? Are you really damning everybody in the ship because there are one or two rats in the hold? Is that your way to remedy a problem? You are going to say that because there are tenants who have been exploited in this province, we are going to make this legislation work in a way that somebody who has a situation for which he is willing to invest in a remedy is damned for the rest of the life of the lease?

**Ms Harrington:** That will not be the case. I think I have explained quite fully—

**Mrs Marland:** Excuse me, I have not finished. I do not know how that cannot be the case when you are saying that the reduction in rent is there for ever except through the gradual increases back through the legal guideline limits each year. It is like saying we had better all be escorted to our cars every single night, and perhaps we should all be escorted to our cars every day, because occasionally there is somebody out in that parking lot who might attack us. Certainly there is exploitation here, but there is no credit given to all the good people. This is such a damning piece of legislation. It is saying: "The situation is unbelievable. It's irreversible unless we come in with this great big elephant gun, and we're not going to give any rights of appeal for individuals because we don't believe in the rights of appeal for individuals." That is another issue I will deal with later on, but, Ms Parrish, you talked about it being a permanent service withdrawal that would make a reduction allowable. Would you like to tell us what is permanent?

**Ms Parrish:** The issue as to what a service withdrawal is has been defined in regulations under the current statute, because the same issue arises in the current statute, that there can be service withdrawal, and this would again be defined by regulation. The general rule is that it has to be reasonable in the circumstances, so you have to look at the circumstances. Clearly, having one elevator out of service for a period of time is different from having no heat in the building. It may be quite unreasonable to have no heat in the building for a week, whereas it might quite reasonable to have the elevator out of service for a week.

But the usual rule is that, whatever it is, it is no more than six months, but it has to be reasonable in the circumstance. It might be reasonable to have an elevator out of commission for six months. It might be quite unreasonable to have the heat off in the building even three or four days. You have to look at what the service is. The same with laundry room renovations: It might be quite reasonable that that would take three or four months. It might be quite unreasonable to have no swimming pool at all during the entire summer months, even if it is the same three months. The general rule is no more than six months, but that it is reasonable in the circumstances.

That is how it is under the current system. We are going to do consultation on regulations. We may hear from the public that there should be a different approach.



**Mrs Marland:** But you have not answered my question. There was a statute in this province when our party was the government that protected tenants against loss of heat. We know all that. That has to be there to protect tenants in regard to something as basic as the supply of heat, electricity and water. That is not what we are talking about. I am asking you to give an example of what is a permanent service withdrawal.

You are saying that permanent service withdrawals are only the kinds of things that make reductions allowable. Tenants are already protected against heat, water or electricity loss. If you are going to say that a permanent service withdrawal is an allowable reduction, then you have to have a definition of "permanent." Are you saying anything beyond six months, or are you saying depending on the gravity of it? There are a whole lot of things you cannot do without, I would suggest, for 24 hours. To be 24 hours without electricity, heat or water is not acceptable for tenants, but if there are other categories of service withdrawals that can be permanent, we need to know what the word "permanent" means in that sense.

**Ms Harrington:** Mrs Marland, you made an allegation earlier that somehow this legislation would interfere with the operation of good landlords. I would like to tell you that certainly I think that would be stretching it. This legislation, this part of it, this phrase will not interfere with good landlords.

I did also indicate earlier that the reason for this particular section is to bring about some balance and fairness. That is the whole reason behind it.

**Mrs Marland:** But is Ms Parrish going to give me the answer to the question about "permanent"?

**Ms Harrington:** These are in the regulations. Is there anything further you would like to comment on that?

**Ms Parrish:** In the current statute, the regulations say that if it is more than six months, it is permanent. It could be a permanent service withdrawal if it was withdrawn for less than a six-month period but the landlord indicated it was his or her intention to clearly withdraw it. If the landlord said, "I am withdrawing this service and I have no intention of ever putting it back in again," then it might be reasonable to assume that is a permanent service withdrawal, because the landlord has said so. That is the first half: Do they say they are going to do it?

The other test is if it is more than six months and the landlord has said nothing. He has not said, "I am withdrawing this service." The service is just gone. Six months pass and nothing has happened. There has been no effort to restore it. That is what the current regulations say.

We do intend to consult on these regulations, but I have to say it appears from what landlords and tenants say that they do not seem to feel that is an unreasonable test. We have not had a lot of complaints about it. We may hear more during the course of the consultations.

**Mrs Marland:** Could I have a copy of the regulations, please, that deal with that subject of permanent service?

**Ms Parrish:** Under Bill 51, or under the RRRRA?

**Mrs Marland:** The current regulations on the permanent service description.

**The Chair:** On that note, we will adjourn until 2 o'clock this afternoon.

The committee recessed at 1159.

## AFTERNOON SITTING

The committee resumed at 1404.

**The Chair:** We are discussing subsection 21(3). Mrs Marland has the floor. Please commence.

**Mrs Marland:** It is time, Colleen, that I knew what your actual title is.

**Ms Parrish:** I am the director of housing policy.

**Mrs Marland:** I actually thought you were an assistant deputy minister.

**Ms Parrish:** I will have to send that piece of Hansard along with Mr White's kind comments of yesterday to my mother.

**Mrs Marland:** And Ms Poole's comments of yesterday too.

**Ms Parrish:** I think what also confuses people is that I am also a lawyer.

**Mrs Marland:** I knew you were a lawyer and I think that is part of the relationship.

I am sure you have not been able to retrieve in our recess the information I asked for, so I do not expect that this afternoon. For me to pursue my questions on what you mean by a permanent service withdrawal—and you refer to what is already in the statute—I need to see what is already in the statute to understand how it is going to apply in this legislation.

I have to go back to one question to the parliamentary assistant, however, because I think it is a political policy decision, not a staff decision. It comes back to the fact that if you have a disincentive to replace a service in a building, and I am suggesting if a property owner has a right to remove a service—I do not think this legislation goes so far as to say the property owner does not have a right to remove a service even though it is in the—maybe I should ask the question.

In the contractual agreement between a tenant and a property owner, namely, the lease, where the two leases identify services that are available to that tenant in that contract, for example, individual laundry rooms on each floor, a swimming pool, indoor squash courts or whatever other items can be considered facilities in that building, are those ever listed in the lease or does the lease always just pertain to the building as it is?

**Ms Parrish:** I would think the facilities that are available would be listed in the lease.

**Mrs Marland:** Are they? I need to know if they are.

**Ms Parrish:** I would start by saying people are not required to have leases. Increasingly, it is common for people not to have leases in Ontario. The practice varies from place to place. Certainly, it would be a good practice for a landlord and a good practice for a tenant to say exactly what services are in the building, but especially with smaller landlords, there is a tendency to use a standard form lease and it does not list the facilities. Larger, more sophisticated landlords will sometimes list things like parking, for which there is a separate charge. I have not seen very many leases that say things like, "Access to

the laundry room between the hours of such and such," or "Use of the party room," or whatever. I cannot say in my own experience I have seen very many.

**Mrs Marland:** Did you say more and more, leases are not being used?

**Ms Parrish:** Yes.

**Mrs Marland:** Why is that?

**Ms Parrish:** With rent control controlling the notice period and the number of times you can increase the rent in a year, people often feel they do not really need a lease. It is quite common, for example, to have a lease for the first year, and then the landlord and the tenant just continue on. It is quite common to find people who will say, "I had a lease 10 years ago and they just never renewed it." They have been on a month-to-month tenancy ever since, but because they have statutory protection, about 90 days' notice and only one rent increase a year, they have actually never noticed they no longer have a lease.

**Mrs Marland:** The landlord and the tenant both have statutory protection without a lease.

1410

**Ms Parrish:** Yes. Large parts of the lease are set out in the Landlord and Tenant Act, which says that no matter what your lease actually says, it is deemed to have these standard provisions. It is the same as your auto insurance policy. It says you have to have this in your lease; you are deemed to have those conditions in your lease. More and more landlords and tenants have relied upon that, particularly after the first year or so, and things have just sort of lapsed, I guess, because both parties have been happy with the arrangement. The tenant is a good payor and the landlord has not bothered to get them to sign on the dotted line again. It is not uncommon that this occurs.

**Mrs Marland:** So the reason this is relevant to this section is—where is the record of what rent is being paid? Is it in the receipts of the tenant, if it is not written in a lease?

**Ms Parrish:** It is often in the receipts of the tenants, the cancelled cheques. It may be in the business records of the landlord. If the landlord is a corporate landlord and they have bona fide business records, there are all these rules about admission of business records. They cannot simply admit the records recorded by their accountant, their rent clerk or whatever they have in their business. Those things are usually referred to in the trade as rent rolls. They can adduce that evidence. If they are a registered building, then they will have their rent registered.

**Mrs Marland:** In the absence of a lease and if leases are not formally a requirement under the Landlord and Tenant Act, which is what you are saying I think—

**Ms Parrish:** That is correct. You are not required to have a lease.

**Mrs Marland:** Right. If the service in the building is reduced by the elimination of a facility, for lack of what other word could generally describe all kinds of things,



what clear evidence is there available if I as a tenant say, "Look, when I rented this place I rented it because it had a, b and c?" Now the landlord has chosen to eliminate those and the standard of the building in terms of facilities, maybe the overall standard of the building, has remained the same, but some of these things have been eliminated. If there is no contractual agreement between me and my landlord about what my rent is, where is the security for me if I say: "I used to have this, this and this. I don't have it any more"? Is it back to the word of people who have been living there for some time as evidence?

**Ms Parrish:** I will start by saying that just because there is no written contract, it does not mean there is no contract. There may be an oral contract and the law will recognize that. There is not always an evidentiary problem because sometimes there is no dispute, and in other cases there is clear evidence because there is a written record. Where there is that kind of issue then, yes, as in any case where there is oral evidence, the person doing the hearing has to weigh credibility, the evidence—if five or six people say the same thing, it is more likely to be true—and other evidence that might be appropriate, pictures and so on. Then they have to decide which evidence seems the most credible. That is how evidence is often adduced both in the courts and before tribunals.

**Mrs Marland:** If I can go back to the parliamentary assistant, if we are really going to reduce this rent because of a permanent withdrawal of service, which was what made the rent reduction allowable according to Ms Parrish this morning, and that service were to be reintroduced, you are saying it can only be reintroduced through the normal annual guideline limitations and the application for something above guideline, because you have to protect the tenants who have come in at the new lower rent. That is what you said this morning.

Can you tell me why you are willing to reduce the standard in that building to the lowest common denominator on the basis that you may have a few new tenants who have come in at the lower rent, even though the landlord is happy to reinstate whatever that service was? There should be some entitlement to the long-term tenants who have had the pleasure of that service and entered into their contractual agreements with the landlord based on those services being there.

**Ms Harrington:** This is going over the same ground we covered. My point this morning about the new tenants moving into the building is certainly, I believe, a valid point. It is related to a bigger picture, not just in isolation. First of all, for you to say this landlord would be happy to reinstate the service, seems to me a little bit remote. We are talking about services which obviously are going to be permanently removed. That is what we were talking about. When that happens, the building obviously is at a different level of rents and a different level of service. It is at a certain level of affordability, and that is what we are trying to protect. If that building has rents in a certain range, we do not want that stability for those tenants changed.

If people living in that apartment building wanted further services, probably those people, if they were able to pay

higher rents, would find a more suitable building, one that was affordable to them and had the services they want. What we are protecting is not just the people moving in; we are talking about the whole affordability question.

You were concentrating just on the people who had moved in. This morning, I believe I broadened that to ask you to look at the other tenants in that building, not the ones who had just moved in at the lower rent, but those who have been there for many years and who have asked for this reduction and have in many cases been paying much higher rents than they should have been for the types of situations I would say they possibly endured in their living accommodation. I would like to look at the broader picture, not just the tenants who move in, but all the tenants who have been living there for some time. If that building does not have those services, it should be at a lower rent and that lower rent should be protected.

1420

**Mrs Marland:** Okay. You have drifted back to your example of deteriorating buildings with deplorable conditions and I have already acknowledged that. Where I wanted to stay was where a service is temporarily removed. I see we have now been handed the regulations from 1986, from the RRRRA. I think it is incredible that you are talking about affordability and stability and in the same sentence you say, "If there has been a reduction in rent because the services are no longer there and if those tenants still want those kinds of services and facilities they can move to another building, because now we've established what the lower benchmark of that rent shall be."

I think this legislation is a headlong dive into reducing the standard of living for people in rental accommodation across this province, because we are interested in affordability and stability. It does not matter if we stabilize those lower rents because the services or facilities have been removed. That is now the new benchmark, and that is where the rent will be. If there are tenants in that building who enjoyed a higher standard of living before, albeit they have had their rent reduced, they have also had their services reduced and that is not really what they want. They want to live in the kind of building with the kind of facilities they contracted for maybe a year or year before, maybe 10 or 12 years ago.

In any case, there is no incentive whatsoever where rent reductions are granted for that property owner to remedy the cause for the rent reduction. That is absolutely clear now from the exchange we have had today. I do not plan to beat this to death, although I wish I could, and have it defeated altogether. If you really want to protect tenants in this province—and we do; we believe that tenants who pay money for their rental accommodation have rights and we believe the people who own that accommodation have rights. We also want the people who live in rental accommodation to have the opportunity to live in an environment they can afford and therefore choose to live in.

If your incentive through this legislation is that rent reductions will be granted where services are not available or where services are removed and you want everybody to come down to that lowest common denominator, then I am



glad that is going to be on your shoulders and not mine, because you are not giving any ray of hope, any little window of opportunity opening, to property owners to remedy. Why would they? The only money they can recover to reinstate those services is through the regular rent maximum guidelines and increases for the rest of the life of that building. If they pour in whatever amount of money to reinstate the services, they still do not get it back through the rents.

I think we are destroying a standard of living for people who live in rental accommodation under the guise of your own words, affordability and stability. Who wants to be stable in a building in a downturn in terms of its quality of environment for those people? That is not what the majority of people in this province want. But you are saying to that poor property owner, "If you remove the laundry rooms and you decide to remove these services, we're going to reduce your rent." If I were the landlord I would say: "Go ahead. There is no way I am ever going to invest in replacing those facilities or that equipment."

**Ms Harrington:** The landlord has to decide to remove them permanently, as is pointed out.

**Mrs Marland:** You have just brought in the regulations, which I have yet to read. But all I am saying is that may be a decision of that landlord, and any number of circumstances may change where that poor landlord decides to reverse his decision. He does not have any opportunity to reverse it. Maybe it is a new landlord who decides to upgrade that building but he cannot upgrade the rent, and I think that is the point.

The landlord might decide: "I am going to give up this. I do not want to be the owner of a building where the rents have been reduced and I have no opportunity to reinstate the building the way I want to have it, with certain facilities available to my tenants." The new landlord decides that he wants to put back some of those facilities, but there is no incentive for him to do that because the rents are controlled by the reduction that the wizard rent officer has now established.

**Mr Callahan:** The wizard?

**Mrs Marland:** That is what the rent control officers are, Mr Callahan. They are wizards, because they can pluck out of the air, they are all-omnipotent, they have total control over what happens to the future of rental accommodation on behalf of tenants and landlords without any right of appeal.

**Mr Callahan:** So that is good.

**Mrs Marland:** Is that not wonderful? It is such bright, progressive planning.

**Mr Callahan:** I think we need a Magna Carta.

**Mrs Marland:** It is obvious that there is no point in my continuing this discussion with the parliamentary assistant, because the government has made up its mind that once it gets those rents down by a decision of the rent officer without any right of appeal to anybody, no matter if the condition is remedied, the rents cannot be increased above the guidelines permitted in the legislation, through the application for small increases above the guideline. In

any case, there is no way for them to recover the cost of the remedy, so why would they do it?

**The Chair:** Before continuing in the rotation, I just note that I have received a letter from Ms Parrish that I believe all members have on their desk. I have also received a copy of the regulations Mrs Marland asked for this morning. I believe all members have copies.

**Mr White:** We are still discussing subsection 21(3) are we?

**Mr Abel:** Yes, still.

**Mr White:** It seems to be a remarkably small clause for such long explication.

**Mr Callahan:** Big things come in little packages.

**Mr White:** There were a couple of points actually that my colleague Ms Poole has mentioned that I wanted to pick up on. That of course was four and a half hours ago and one tends to forget these points after a time.

I would like to mention this clause. I think it is a very significant one. It is a very important clause because the tenants of our province—Mrs Marland has mentioned how tenants have been exploited—can be very confused when they read "maximum rents" on the submissions from their landlords. It can be very confusing because what is presently affordable, what is presently the marketplace level for rents, is of course not necessarily what the maximum rent could be. It is very confusing to see these different figures.

In an apartment where I have some tenancy, I have had for the same apartment three or four different figures quoted from the same landlord. They are several hundred dollars apart, and fortunately I was able to secure the lowest of those figures.

I thought a number of points Mrs Marland brought out were significant. The marketplace, of course, is the means by which many people in her party would, I believe, like to see regulation of rental accommodations. At present, what is legal, what is potential, is way beyond what the marketplace can bear, so in consequence the rents that are asked are often quite reasonable. In time to come, I am wondering what will happen.

What will happen for those people who have entered into contracts with their landlords, who have tenancy now and can renew, or people who come in and can secure an apartment at a reasonable rent? Will those landlords be charging the maximum rent plus 6%, plus 6%, plus 6%? will there be any protection at all for those tenants who are now paying a much more reasonable and affordable rate? I am wondering if this clause deals with that issue. Ms Parrish, could you respond to that?

1430

**Ms Parrish:** No, this clause does not deal with that issue. This clause deals with whether or not an order could actually reduce the maximum rent. It may be that landlords are charging less than the maximum rent, and if they are, they can increase their rent to maximum rent, but they can only do it under certain circumstances. You can only increase the rent once a year, so every tenant has the protection that the rent will never go up more than once a year.



Landlords must give 90 days' notice of any rent increase, including the statutory increase. They can only move to maximum rent if they have told the tenant, when the tenant moved in, "I am charging you X, and that's the actual rent I'm going to charge you, and by the way, this is the maximum legal rent." If the landlord does not tell you that this is the maximum legal rent when you move in or the maximum rent he can charge, he cannot move to that maximum rent for another year. So they have to give the tenant at least one year's notice that they actually charging more than the maximum rent. But this particular subsection, 21(3), deals with decreases in maximum rent, and not increases.

**Mr White:** In the situation I described, would it not be possible for that rent officer to reduce the maximum rent?

**Ms Parrish:** Yes, the rent officer could, if the right evidence was adduced, reduce the maximum rent below what its current level is.

**Mr Owens:** I would like to ask Ms Parrish a question about the reduction of rents in the event of withdrawal of services. Is there any average dollar amount that you can think of at this point that rents would be reduced? Are we talking about dollars in double digits or triple digits?

**Ms Parrish:** I cannot give you an average. I have not done a survey. We do sample orders to see what happens. Usually service reduction cases involve things like parking and swimming pools, lockers, things of that nature. They are usually fairly modest amounts frankly. You do get occasional cases that are very bad, where the landlord has withdrawn almost everything. But most cases involve fairly modest amounts of money, such as \$10 a month for the locker or \$20 for the parking or whatever, because they are usually services in the common area and the base rent is usually for the unit.

**Mr Owens:** So in terms of the catastrophic and dire predictions made this morning during Mrs Marland's line of questioning, you do not see that in reality the \$10 or \$20 is going to have that kind of an impact on the landlord? Is that correct?

Interjections.

**The Chair:** Order. I would like to be able to hear what Mr Owens is saying.

**Ms Parrish:** I would hesitate to predict, but certainly in the case of service withdrawal there is no particular reason to think there will be a significantly different change in pattern. Usually landlords withdraw services for a reason. I do not think they are more likely to withdraw services now than they were before. It is likely to be the same kinds of services that are being withdrawn. I do not think there will be a significantly changed experience.

**Mr Owens:** We talked this morning about when a reduced rent appears to be permanent. I think Mrs Marland made a comment about vandalism and the inability of the landlord to repair the faucets in the laundry room or whatever. At what point does one determine permanency? Is that a statement of fact by the landlord? Or is it something

that is determined after a period of time by a rent review officer?

**Ms Parrish:** Under the current act it is determined by a test which is set out by regulation. The current test, which was distributed to the members, says, "No reduction to the rent increase shall be made for the discontinuance or reduction of a service or facility if the service or facility is restored within a reasonable length of time not exceeding six months."

**Mr Owens:** So would that order be retroactive to the first date that a service was withdrawn, or is the effective date the date of the order?

**Ms Parrish:** I believe the effective date is the date of the service withdrawal. If I could have a moment, I may want to just check that with one of our lawyers.

**Mr Owens:** I have all the time the Chair would like to give me.

**Ms Parrish:** I recall that for service withdrawal it is the time that the service was withdrawn. For inadequate maintenance it is the time of the application.

**The Chair:** Are you wishing to check that, Ms Parrish?

**Ms Parrish:** Is that possible? May I just check that?

**The Chair:** Or we can have your lawyer approach.

**Ms Parrish:** Can I do this? I am almost positive that for service withdrawal the test is at the time of the withdrawal and in the case of inadequate maintenance it is at the time of application. I will just confirm that with our lawyers. Perhaps you can—

**Mr Owens:** Continue to ramble, as I am. In terms of some of the other comments that were made this morning regarding subsection 21(3), I find it astounding and, I must admit, quite miraculous, and I must congratulate the landlords in the riding of Mississauga South for doing their maintenance as they should and keeping the buildings neat and intact and providing the services as per the lease, because the kinds of difficulties we have seen in Scarborough would cry out for a subsection like 21(3) to be put in.

I think of a particular situation. Shortly after I was elected I was out to organize a tenants' association in one of the buildings in my riding. We had the first meeting of the tenants' association in the lobby of the apartment building. One may ask: "Why did you do that? Is that just a good MPP meeting his constituents in the lobby, as Ms Poole indicated she does on a regular basis?" No, the reason we had to meet in the lobby was that the landlord had converted the meeting space he had within the building to private accommodation for tenants. Shortly thereafter, after our meeting, I gather word got back that what he was doing was not appropriate. So we had a meeting room for the second meeting of the tenants' association.

1440

This is not something that took place over a two-week period and people wanting to utilize services like a meeting room or a swimming pool. I think perhaps even more important is the issue around maintenance. I know we do not want to use that N-word, neglect. That seems to cause a whole bunch of trouble for folks opposite, but when you look at the kinds of situations we have in Scarborough



where maintenance is a definite issue, Mrs Marland is saying: "No, you shouldn't have the right to roll back the rent. If you do, however, we want you to put it back to the old amount forthwith upon completion of the repairs."

My question, rhetorically through the Chair of course, is around the issue that the landlord or the property owner has been doing this over a period of years. Neglect does not occur within a 30-day period. Neglect takes its toll over a period of years, but meanwhile these tenants have been paying full rent. On one hand the member of the third party questions, "Isn't it terrible that we wouldn't want to return the amount back to the full maximum rent upon completion?" I think the second part of that question is in terms of returning the money the property owner has made during this period of the N-word, neglect. Do we not also need to take a look at a method of returning the profits that have been made while the landlord has not kept up his building?

The thing that bothered me most and has concerned me throughout this clause-by-clause that I have been involved in, and again today under 21(3), is the issue of the dire predictions and the fearmongering that has been going on on the part of the members opposite. If you look back at the legislation that this government passed around the Mortgages Act to protect tenants in the event that their buildings do go bankrupt, there is no need to try to spread fear among tenants. They will be protected.

It was extremely timely that this legislation was passed, because I had tenants in my riding contacting me to indicate that they had received notification that utilities were being cut if moneys were not paid by a certain date. "What are we going to do? Will we still have a place to live?" I was able to assure those people that they in fact would have a place to live. The lack of understanding as to why we would need a subsection like 21(3) to be in the legislation concerns me.

Another issue I find passing strange is the issue of the new owner. One assumes that if at this point the potential new owner has any kind of business acumen, he is going to take a look at the condition of the building. He is going to take a look at the costs associated with the purchase of this building, and by costs associated with the purchase of this building I mean specifically around what one would have to do to bring these buildings up to standard. If the current owner tries to say, "There are no orders against this building," he is clearly misleading the potential purchaser. As I say, a business person with any kind of business acumen is going to attempt to negotiate an appropriate selling price.

I think some of the cases we have seen cited in the press of recent date are probably fairly spectacular. I once again refer to some buildings in the Parkdale area represented by a member of the official opposition, Mr Ruprecht. They do not always have to be that spectacular and that devastating. Tenants are being denied services, are living in buildings where maintenance is not being done and need to have the kinds of avenues subsection 21(3) permits.

If landlords intent upon keeping their buildings up to standard, if they are interested in making sure the tenants

are happy, then the issue of 21(3) is not going to be a problem with these landlords. I understand this clause causes particular grief within the landlord community, but there are lots of laws where if people sat down and actually thought of the kinds of coercive power government has over people, they would be quite concerned. But because most people abide by the law, most people do their duty, most people fulfil their obligations under the kinds of social contracts we as human beings have with each other, then it is not a problem. However, we need the alternative this kind of clause offers so that in the event the landlord does not live up to his or her obligations under the lease, under the kinds of social contracts we have, then there is an avenue for relief.

Again, I am not surprised that this clause offers or causes the kind of difficulty it has to the member of the third party who spoke this morning and into this afternoon. I will issue this invitation here and now, to bring this member to Scarborough to take a look at some of the buildings that are out there and ask her honestly whether there is not the need for this kind of means to remedy. I issue that invitation today and I would be glad to host her at any time.

**The Chair:** Ms Parrish had an answer to one of Mr Owens's questions, I believe.

Interjections.

**The Chair:** Order. We would be most interested in the response to the questions that Mr Owens had raised.

**Ms Parrish:** I just wanted to confirm the answer I gave to Mr Owens. If there is a withdrawal-of-service order, the order is effective on the day that the service withdrawal first occurred. If there is any other kind of order, for example, due to inadequate maintenance, it is effective on the day which is set out in the order, which cannot be before there has been an application by the tenants requesting a reduction in rent.

**Mr Owens:** So at this point, under current regulations and legislation, there is no means to remedy for tenants with any immediacy. I understand there is a process where one can apply for rebates, but in terms of the net positive effect for tenants—I do not see this as a particularly political question—is this not a better way, under 21(3), to approach the issue?

1450

**Ms Parrish:** Under Bill 121 tenants may make an independent application to deal with inadequate maintenance or service withdrawal instead of having to use it essentially as a shield to a landlord's application for a rent increase. They can make an individual application for a rebate. Sometimes when you are dealing with a whole building that is very difficult, because under the current system you cannot have whole-building review for tenants. They have to do this on a case-by-case basis, which is quite cumbersome.

**Mr Owens:** There is, however, the process where one does not necessarily have to deal on a case-by-case basis. At some point a whole-building review will be conducted automatically by the rent review officer.



**Ms Parrish:** Under Bill 121 this issue must be considered whenever a landlord makes an application, so that would be one situation. Or the tenants may make their own application on a whole-building basis. That is different from the Bill 51 rules. That is, the tenants have the same ability as the landlord to make applications, which differs from the current Bill 51, which triggers most applications, except for rebates, from landlord applications. If you have a building which is very poorly run, for example, and your landlord never makes any applications for anything, it is very difficult to bring your case forward. That has changed under Bill 121, to give landlords and tenants more equal ability to bring their issues to the forefront.

**Mr Callahan:** It is nice to be back. I feel like this issue has been beaten to death for about seven years. I have had a chance to flip through the bill and, wow, I am glad to see that this whole process has at least come up with a few glitches that were brought to our attention. When I first looked at it I was going to ask how a tenant can bring an application after he is no longer a tenant, but I note that was put in by amendment. At least something is coming out of the process: the holes are being filled.

I remember when we were the government and we brought in our Sunday shopping legislation. I remember the now Premier, the now—

**Mr Mammoliti:** Is this relevant?

**Mr Callahan:** Certainly it is. Of course, this is all a premise coming up to what I am about to say.

**Mr Owens:** This is good political analysis we are getting.

**Mr Callahan:** The now host of the late-night show on CFTO, affectionately known by another name by the Toronto Sun in other circles, would scream about the fact that you could not protect workers because the reality was that if you brought in legislation as we did to allow tenants in shopping plazas not to have to open, what would happen was that the landlord would find some other way to get rid of them. I have to throw back the same question.

The premise was made by Mr Owens that people obey the law. I think that is probably a good starting point. We have to assume that is the case. When you create a bill like this that is so constricted on people, particularly landlords who have invested their capital in the building, it is like toothpaste: if you squeeze it enough, it will force it out some end. That is exactly what will happen here.

What I want to know, and maybe one of the government members can give us this big answer, is what happens when tenants who like where they are living, like the accommodations they have and the landlord perhaps is charging illegal rent, and do not want to go to the wizard, as Margie calls him. What do they do? How do they get recourse? I had a call this afternoon at my office here about a situation where I was told a couple who liked their accommodations are paying \$900 a month for a two-bedroom house. They are paying \$1,500 every three months to their landlord, supposedly for taxes. I find that very difficult to understand, because those are extremely high taxes. The only thing I can conclude is that this guy has come up with a very innovative way to collect higher rent. They

cannot do anything. They want to stay where they are. If they blow the whistle on him, they are gone.

How do you answer that question? If you force people into this particular predicament by the contents of this bill, how do you really protect tenants who, number one, either like the location they are in, like the accommodations they have or just cannot afford to go anywhere else? How do you protect them? Where is there anything in this bill? Point to something in this bill, or in the Landlord and Tenant Act for that matter, that protects those people who are being hosed by the small number of those who have tried to squeeze the toothpaste tube and it has come out the wrong side. How do you protect them? Is there anything in here to protect them?

**The Chair:** I am hopeful that the answer will be framed in the context of subsection 21(3).

**Mr Callahan:** The reason I raised it is that it really is germane to the section, because the section is one of the sections in this bill that is putting constraints on landlords in terms of the economic return to make it worthwhile to be a landlord.

I want to know if there is something in this bill or in the Landlord and Tenant Act that magically protects these people in my scenario who like where they are living or cannot afford to move elsewhere or whose kids are going to school in a particular neighbourhood. How does this protect them in terms of illegal rent increases? Can somebody tell me that?

First of all, I will ask, from a legal standpoint, is there anything in this bill or in the Landlord and Tenant Act that would allow them to secure their remedies, without them being pitched out or evicted or their life made so bad that they have to get out?

**Ms Parrish:** The answer is yes. There are many protections, both in this bill and in the Landlord and Tenant Act. But I feel somewhat constrained in the sense that none of those remedies is in subsection 21(3) and the Chair has asked that I confine my discussion to that.

**Mr Callahan:** I do not think he meant to be that constrictive, did you, Mr Chair?

**The Chair:** I probably did.

**Mr Callahan:** From some of the stuff I have heard go on here this morning, you can talk about almost anything.

**Ms Parrish:** Mr Chair, I am in your hands.

**The Chair:** We are discussing subsection 21(3).

**Mr Callahan:** I am relating this to it because, as I say, that is a terribly exciting section.

**Mr Mammoliti:** You are better off talking about Robin Hood.

**Mr Callahan:** No, it is a terribly exciting section. It is fine to try to pass legislation that is improperly balanced because the net result is that you create an unreal world. That is all I am saying.

**Ms Harrington:** I would just like to make a comment. It will not answer everything, but obviously our government and many governments try to give people rights and give people protection under legislation. That is why we are here.



**Mr Callahan:** Agreed.

**Ms Harrington:** In an ideal world, it certainly would work. But I think everyone realizes that no matter what you put in, there are going to be those people who find a way around it. In that particular case, something strange is happening. On the other hand, even if you give people rights and try to enable and empower them and give them choices in their life, it is really up to them, on the bottom line, whether they are going to submit themselves to this or they are going to try and take some action. Even if there is an avenue open to them, it is up to that individual. Nothing is perfect in life. We cannot guarantee that you live in the right house and the right place with the right school. Maybe they will have to move.

**Mr Callahan:** You have given the right answer, Margaret. You are at least a realist.

I have to say as well that I do not know about anybody else's community, but my last investigation in my community revealed that there are all sorts of rental accommodations now because landlords are deserting the ship left, right and centre. They cannot see any point in continuing to be landlords, so maybe this bill is shutting the barn door after the horse is gone.

With reference to subsection 21(3) specifically, I do not quite understand the bit that says capital expenditures shall not be included in determining the maximum rents for the rental units. Does that mean if a landlord does some capital improvements that are not within that rather restrictive guideline of taxes increasing by 50% or hydro increasing by 50% etc, he cannot use that as a way of increasing the rent on an application?

**Ms Harrington:** Are you referring to subsection 21(3)?

1500

**Mr Callahan:** Yes.

**Ms Parrish:** That the rent officer may order a maximum rent in an amount less than the previous maximum rent?

**Mr Callahan:** No. I have subsection 21(3) here, I think.

**The Chair:** Page 25?

**Mr Callahan:** Sorry, I was on 23. Maybe you can answer that question. Give me a break, will you, Mr Chairman? I am just subbing in here and I would like an answer to that. Then I will let my friend the critic take over the rest of the time. Can you answer that question for me? Does that mean if capital expenditures are made and they do not fall into those categories of 50% increases and so on, special—

**Ms Harrington:** We give the landlord a 6% increase in this particular year, which is the guideline, and within that there is an allowance of 2% cent, which is for capital.

**Mr Callahan:** The answer to that question is that he cannot pass it through then, I gather.

**Ms Harrington:** No.

**Mr Callahan:** Finally, in closing—and I do not know if I say this facetiously or not—is this the reason that the

present government has allowed Hydro to increase our hydro rates by up to 43%, in order to ensure that it might meet the test for the 50% category for next year?

**The Chair:** Mr Callahan—

**Mr Callahan:** I yield.

**The Chair:** That question could more properly be asked next door in committee room 2.

**Mr Callahan:** All right. Maybe I will wander in there.

**Ms Poole:** The parliamentary assistant has maintained that the reason they quickly scrambled to come up with for rejecting any amendment to subsection 21(3) is the fact that tenants want stability, and a new tenant may come in and if the maximum rent which had been reduced was increased to the original amount, it would prejudice the new tenant. This government insists on purveying the information that the only issue of real importance to tenants is rents, and it is not true.

**Mr Owens:** Who said that?

**Ms Poole:** It has been said many times. Rents are a primary focus of this government, but rent increases are only part of the picture. Tenants also want a building in which they can live, hopefully well maintained. Hopefully the building should be comfortable. It should also have the amenities which most people would say are fairly essential to leading a comfortable life, such as a laundry room, for instance.

If this government deems in its wisdom that it will not put in a mechanism to allow a landlord to put in services that were withdrawn and for which there was a rent reduction, then what incentive is there for that landlord to put the service back in? There is none. I do not know if I have to spell out what the word "incentive" means.

**Mr Mammoliti:** Let's talk about the moral aspect.

**The Chair:** If members would like to be on the list, I would be pleased to put them on the list. Otherwise, Ms Poole has the floor.

**Ms Poole:** Mr Mammoliti says, "Let's talk about the moral aspect." I happen to think that fairness is morality.

**Mr Mammoliti:** You are not being fair.

**Ms Poole:** If Mr Mammoliti says to me that it is fair to put in that rent reduction in the first place and then not provide an opportunity for that rent reduction to be relieved, then I say to him that is immoral and that is unfair and that is not the way we used to do business in Ontario. It is a matter of fairness.

It is not a matter of having a problem with reducing the rent in the beginning. If a bona fide case can be proved where the landlord has had inadequate maintenance or has withdrawn services, of course the tenant should have the right and the mechanism by which to get that rent reduced. By the same token, if those problems are rectified, if the maintenance standards are restored, if the services are once again put into place, you cannot give me a logical reason why that rent should not be restored to its original level. It comes down to a matter of fairness.

**Mr Chair,** I am about to give an amendment to the clerk for copying for members. I am not moving it at this time because I feel the most appropriate way to deal with it



would be to create a new section. It is in direct reference to subsection 21(3). I will just tell you of its intention, for members' information, so that they can think about it. We obviously will not get to it until such time as we have finished all of section 21. The effect of my motion would make it possible for a landlord to have an application to increase the amount of the maximum rent by the amount it was reduced.

There are two tests that the landlord would have to meet in order to have the rent officer order the increase in maximum rent equal to the amount of the reduction. The first test would be that the landlord has to demonstrate, has to prove and provide evidence to the rent officer that the standard of maintenance or repair of the rental unit, or of the complex, if that is the particular area where the rent was reduced, which was the subject of a previous application, is in compliance with the applicable municipal standards or the provincial standard. The second part of that would refer to the restoration of service by a landlord, or a facility that is once again provided by a landlord, where the landlord can show that this service has resumed. In these two instances, the landlord would have a remedy in order to go back to rent review.

I am going to leave it at that. As I said, I will not move that particular amendment right now, but I will provide a copy for members as soon as it is back from the clerk's tender mercies.

**The Chair:** Thank you for the information, Ms Poole.

Are there further questions or comments on subsection 21(3)? Shall subsection 21(3) carry? All in favour? Opposed? Carried.

On subsection 21(4), are there questions or comments or amendments? Perhaps we could have a brief explanation of the section.

**Ms Harrington:** Subsection 21(4) sets out that the rent officer shall not order an amount which is greater than the amount proposed by the landlord. It is fairly clear.

**Ms Poole:** This section was put in to remedy a problem which was encountered under Bill 51 where there was no limitation on a rent officer as far as the amount of the increase. If the landlord had made a mistake in the application or had provided information which later proved that there should be a larger rent increase, then in fact the rent officer had the right and the power to order a rent increase that was actually greater than the application had proposed.

I think this is a very reasonable amendment to clear up what I am sure was an oversight in the original legislation and certainly not the intent. I think it will certainly suggest to landlords that they should be extremely careful when they put in their application that they ensure that all their documentation is enclosed and that their calculations are correct, because they are not going to have that opportunity for a rent officer to give them relief at a later time in that regard. The Liberal caucus will be supporting this amendment, or at least I will. If my colleagues cooperate, they will too.

**The Chair:** Further questions, comments, amendments to subsection 21(4)? Shall subsection 21(4) carry? Carried.

Next is subsection 21(4.1) as printed, I believe.

1510

**Ms Harrington:** Yes. Subsection 21(4.1) provides that if the maximum rent ordered by a rent officer as a result of an application for an above-guideline increase includes any new capital components, the rent officer shall set out in the order for each rental unit the total amount of each capital component and the date on which it is to be deducted from the maximum rent. Subsection 21(4.1) is a government amendment to reflect the policy regarding costs no longer borne and how this is to be indicated on the order.

**The Chair:** Questions, comments or amendments to subsection 21(4.1)?

**Ms Harrington:** I would just like to comment that originally the Liberal Party did support us and initiated some conversation in this direction. This is a technical amendment that would set out the time and amount of the capital components that came into the rent and therefore the time and amount that would be taken out.

**The Chair:** Shall subsection 21(4.1) carry? Carried.

Subsection 21(5). This is also as printed.

**Ms Harrington:** This is jurisdiction to carry forward amounts justified for capital expenditures in excess of the amount which can be ordered. It is set out in section 21(5). The excess may be carried forward for a period of 24 months from the first effective date of the rent increase in the order. Note that this is a government amendment to reflect the policy change that a carry-forward allowance may be carried forward for 24 months for all buildings, regardless of the size of the building.

**The Chair:** Questions, comments, to subsection 21(5)? I note that we have stood down two subsections from section 20 that are contingent upon the decision on this amendment.

**Ms Poole:** Mr Chair, the Liberal Party has an amendment to the government amendment on subsection 21(5). I am just asking for your guidance at which stage it would be appropriate for this amendment to be dealt with.

**The Chair:** I am sorry I did not note that. I think it should be moved. I notice also that the Conservative Party has an amendment. I have not had a chance to look at them, but briefly, I do not think they are the same amendments, so they will be considered separately. If you would move the Liberal amendment, Ms Poole.

**Ms Poole:** All members have a copy of the Liberal amendment to subsection 21(5). Just before I read it out, I would advise you of a change that is on this amendment. After talking to legislative counsel about this, the intention of the amendment was to provide four years of additional carry-forward after the additional year, making a total of five years for categories 1 to 4. When it was drafted, five had been put in as a total, so I will be reading that as an amendment as I go through.

**The Chair:** Ms Poole moves that subsection 21(5) of the bill be struck out and the following substituted:

"(5) If the rent officer's findings respecting a rental unit would justify an increase of more than the amount



allowed under subsection (2) or (4) and the excess includes an amount determined to be justified for capital expenditures, the rent officer shall provide in the order that the excess in respect of capital expenditures may be carried forward for the period set out below if no order under this subsection has previously been made respecting that excess:

"1. Four years from the effective date of the first rent increase in the residential complex under the order if the work giving rise to the capital expenditure was substantially completed on or after the 1st day of September, 1989 and before the 6th day of June, 1991.

"2. Four years from the effective date of the first rent increase in the residential complex under the order if the residential complex is at least 30 years old and no rent increase above the guideline has been implemented for the rental unit in the previous three years.

"3. Four years from the effective date of the first rent increase in the residential complex under the order if the capital expenditure relates to substantial restoration of concrete that is necessary to protect the safety of tenants or the building.

"4. Four years from the effective date of the first rent increase in the residential complex under the order if the residential complex is a designated property under part IV of the Ontario Heritage Act.

"5. Two years from the effective date of the first rent increase in the residential complex under the order in all other cases."

Ms Poole, would you care to speak to your amendment?

**Ms Poole:** Basically the Liberal caucus has agreed with the government in the standard case that there be two years of carry-forward. As you would appreciate, at the time we formulated our amendment, the bill contained a section which had a different carry-forward for large buildings and for small buildings. There was a one-year carry-forward for large buildings and a two-year for small buildings. We very much felt that this should be standardized and that the two years would be a more appropriate limit.

Since that time the government has filed its own amendment, which is very much along these lines. However, we are also cognizant that there are special circumstances in which we feel a longer carry-forward could be justified, making a total of five years in four other instances where tenants could expect a rent increase of up to 3% above the guideline.

The first instance refers to those situations caught in Bill 4 where there was a freeze and the applications were not allowed to go forward. In this particular instance it is a matter of fairness. The landlords did capital repairs under different legislation and under significantly different rules. They expended money and they obtained loans under those rules, so we feel in fairness that they should be given an opportunity to at least recoup a significant amount of their moneys from this. Paragraph 1 would be in that relation.

Paragraph 2 refers to older buildings or our aging housing stock. Two thirds of our buildings are 30 years old or older, and notwithstanding the minister's comments to the contrary, older buildings are much more expensive to repair, to restore and to maintain. Many of these older

complexes are the smaller ones, because as all members are aware, the newer buildings tend to be high-rise and fairly large edifices. But the smaller buildings that are quite aged need significant amounts of repairs. Sometimes, because they are smaller buildings, it would take a much longer period in which to pay off those increases, particularly when it is capped at 3%.

I think certainly from the witnesses we had come before us there was a need to address the older housing stock issue since the government had remained adamant from day one that it had established the cap at 3% and this was the maximum it was felt tenants could bear in any one given year. Given the government's adamant position in this regard, the only alternative to give relief for the older buildings was to extend the carry-forward.

The third instance relates to substantial restoration of concrete. There will be instances, and we saw one of them yesterday on the sheet provided by the ministry, where the cap plus the carry-forward would not allow that concrete restoration to be done and the landlord to recoup the moneys from it. The government may argue that not very many cases would be affected by this, but if that is indeed true, then I do not see why they would object to this particular amendment.

Paragraph 4 refers to buildings designated under part IV of the Ontario Heritage Act. I believe we had two presentations in Bill 121, and these were certainly extraordinary circumstances, but they were older buildings—and when I say "older" I am talking in the range of the century mark—which needed such extensive work in order to comply with the act and to be preserved that the amount allowed under the act is just a pittance and would not even begin to touch it. The sad fact is that even having a carry-forward of four years, making a total of five years, probably would not lead to the people in this particular situation recouping the money, but at least it would be of some help.

Again, this would have to be a building designated under part IV of the Ontario Heritage Act and also a building occupied by a tenant or designated as rental property, so the number of buildings that would actually fit into this category would be extremely minimal.

Paragraph 5, of course, is the category which relates to the balance of buildings that were not caught under Bill 4: buildings that are over 30 years old or buildings that need substantial restoration of concrete, where the three-year carry-forward is inadequate. All other buildings would be given the two-year carry-forward.

I am very optimistic that the government will like this amendment very much since it is so moderate and does not interfere with its concept of a cap and at the same time will ensure that repairs to our aging housing stock take place.

**The Chair:** Further questions or comments?

**Mr Callahan:** Actually, they do not seem to be picking up the bait.

**The Chair:** Seeing none, shall Ms Poole's amendment to subsection 21(5) carry? We have a request for 20 minutes. We will reconvene at 3:46 pm for a vote.

The committee recessed at 1524.



1543

**The Chair:** All in favour of Ms Poole's amendment to subsection 21(5)?

**Ms Poole:** A recorded vote, please, Mr Chair.

**Mr Callahan:** How do we do that?

**The Chair:** You raise your hand, Mr Callahan.

The committee divided on Ms Poole's motion, which was negated on the following vote:

**Ayes—4**

Callahan, Jackson, Morin, Poole.

**Nays—6**

Abel, Frankford, Harrington, Mammoliti, Owens, White.

**The Chair:** Mr Jackson, you have an amendment.

**Mr Jackson:** Well—

**Mr Mammoliti:** Let's hear it.

**Mr Jackson:** You really want to hear it? Mr Mammoliti wants to hear it. I was not going to present it, but since I have been invited to, I will.

**The Chair:** Mr Jackson moves that subsection 21(5) be struck out and the following substituted:

"(5) If the rent officer's findings respecting a rental unit would justify an increase of more than the amount allowed under subsection (2) or (4) and the excess includes an amount determined to be justified for capital expenditures, the rent officer may provide in the order that the excess in respect of capital expenditures may be carried forward until there is no further such excess."

Do you wish to speak to your amendment?

**Mr Jackson:** No, I think we had a thorough debate on the previous amendment.

**Ms Poole:** Just on a point of clarification, if I could ask Mr Jackson, when it says, "If the rent officer's findings respecting a rental unit would justify an increase of more than the amount allowed under subsection (2) or (4)," would you be referring in that event to an amount above the cap?

**Mr Jackson:** Yes. When I spoke to the previous section dealing with the cap at 3%, I indicated that perhaps the solution would lie in some flexibility with stronger conditions placed on raising the cap above 3%. This would be an opportunity to do that and the government could work with it in terms of ensuring that the cap does not go too high but that it recognizes those extraordinary cases that may crop up. For that reason, this is an opportunity for the principle of fairness to apply. It is just a different way of wording that section.

If you wish further clarifications, I will have to get Mrs Marland here.

**Ms Poole:** No, I am quite satisfied with Mr Jackson's explanation.

Motion negated.

**The Chair:** Returning then to the government amendment, subsection 21(5) as printed, questions or comments?

**Ms Poole:** I am pleased that the government has rethought its original position, which was that it was going to tie it to small buildings and large buildings, and that it has settled on two years as the number of years for carry-forward.

I will just reiterate my disappointment that the government has not seen fit to look at the extraordinary cases, and in some cases the not so extraordinary cases, the quite ordinary cases of the older buildings which may well require more than the two years of carry-forward. I think the effect of this is going to be that instead of a landlord doing a significant amount of the work at one time—in fact because the landlord has done the work at that one time, he can get a better price break on materials, labour and other construction material. Second, it would prevent the scenario where every three years the tenants are subjected to more construction. It would basically get a lot of the hassle and the inconvenience of construction out at one time and then allow for a number of years of carry-forward.

The government amendment, however, does not allow for that. It is quite restrictive in that regard. I think when you consider that some of the repairs will be fairly extensive and when you consider the options, that the landlord could do all the repairs at one time and phase it out over five years or, in the alternative, the landlord could do the repairs, phase it out over three years of rent increases and then have to go back and do another bout of construction and ask for another rent increase, all you are really doing is making sure that tenants are more inconvenienced, suffer more hassle and end up paying more for the work that is being done because you are going to parcel it up in smaller lots.

I really regret the lack of foresight by the government in limiting the carry-forward to the two years. I think it would certainly not have harmed the rent stability they are talking about to have allowed a longer period of carry-forward. I am just disappointed that they did not consider that.

1550

**Ms Harrington:** There is one point Ms Poole has not related in the equation we are dealing with here between the costs by the landlord for the upkeep of the building and the payment of the tenants involved here, that this legislation is a balance between allowing protection for the tenants and the cost of repairs for the landlord to be shared by the landlord and tenants.

That means that not all repairs are to be passed through to the tenants. There is a financial responsibility on the part of the landlord, whereas in the previous legislation, the RRRA, all repairs could be passed through. That is not the intent of this legislation. It is a fundamentally different concept, that if the landlord wants to do repairs, necessary capital repairs can be shared with the tenants to some extent but the landlord also has responsibility.

You are saying he cannot do them. Yes, he can. He can use some other funds of his. He has responsibility as well as the tenants. We believe the idea of allowing, as you mentioned, a three-year period will encourage not the



bunching up which we have seen in the past but a long-term plan for what needs to be done with these buildings.

**Ms Poole:** Three years is not a long-term plan, Ms Harrington.

**Ms Harrington:** I understand that. What we are saying is that a landlord will realize how much he can do over the next period and then will look beyond that and try to measure things out and spread them over a period of years instead of trying to do all the repairs at one time where in the past, under RRRA, he could pass all that through that way and increase his rents to some usual amount which exceeded the guideline by quite a bit.

**Ms Poole:** I wish Ms Harrington had not muddled the issues by talking about necessary repairs and non-necessary repairs. That has absolutely nothing to do with what we are talking about. When we were talking about having an extended carry-forward, it was for necessary repairs as deemed under your legislation. A cap would still be in place so that tenants would receive the stability you have said you want. The only thing you have prevented by limiting the amount of carry-forward is allowing the construction to occur at one time and be phased out in rent increases over a number of years.

You have said: "Do construction. Have a couple years and do more construction. Do a couple of years, do more construction, another couple of years." That is not really accomplishing anything. All it is doing is putting the tenants and landlords to extra aggravation by having to go through rent review, by making tenants suffer the inconvenience and hassle of having constant construction instead of being able to have it once in five years. You are saying that the landlord would have the construction, get his three years of phase-in and in the third year start construction for the next three years. You are not protecting the tenants any more. I just cannot see why you are objecting to extending the carry-forward.

**Ms Harrington:** Because the landlord has to have financial responsibility in this as well. It is not necessary to pass everything through to the tenants.

**Ms Poole:** Mr Chair, I would say to the parliamentary assistant, through you, that we live in a world of reality, or at least some of us try and maybe not so successfully some days. But in that world of reality does the parliamentary assistant really believe that if a landlord has the option of cost pass-through during a three-year period and then to go back, do more construction and have a further cost pass-through, he is instead going to do a five-year plan and put part of the money through cost recovery for the tenants and the other part he is going to do himself? No. It does not address that concern at all.

That has not got anything to do with this equation and it is not going to encourage landlords to put their own money in. They are just going to delay doing the repairs until such time as their previous rent increase has gone through, because the original premise when rent review was brought into this province was that the market would be constricted. It was brought in by a party that does not believe in constricting a market, but it was brought in on the quid pro quo that there be cost recovery and it was

brought in on the understanding that what was to be prevented was rent gouging.

**Ms Harrington:** I disagree.

**Mr Mammoliti:** Are you saying they are neglecting the buildings? I hope that is not what you are saying.

**The Chair:** Mr Mammoliti, I can put you on the list.

**Ms Poole:** I have several other suggestions of where you could put Mr Mammoliti, Mr Chair, but it might be inappropriate.

**The Chair:** No. We will not do that.

**Ms Poole:** We will not do that, okay.

**Mr Jackson:** Even if he was there he would not get a cabinet post.

**Mr Mammoliti:** It would be a lot easier to put you there.

**Ms Poole:** Mr Mammoliti, you want me to go to cabinet? Thank you. One of the many places—Mr Chair, I quite lost my train of thought, but I think what I was trying to point out is that when rent review was brought in, it was brought in as a tenant protection against rent gouging and that is why full cost pass-through was allowed. The government has said it wishes to limit the cost pass-through in order to protect tenants and the stability of their rents. All I am saying to the parliamentary assistant is, why would they put in a provision limiting the amount of carry-forward when it does not provide any more stability? It is not going to mean that one more landlord would put more of his or her own money in. All it does, like I say, is increase the number of times they will have construction, increase the number of times the tenants' association has to go to rent review and fight an application, increase the amount of bureaucracy that is necessary, and what have you accomplished by it? What exactly have you accomplished?

**Ms Harrington:** Ms Poole, I do not think we are going to accomplish any meeting of minds here. It is just astounding to me that the opposition cannot understand that this government does not believe in full cost pass-through to the tenants.

**Ms Poole:** At least we figured that out, Ms Harrington.

**Ms Harrington:** If you have X number of years that it can roll across, that the cost of repairs can go on and on and on, then that is full cost pass-through. That is not what we are doing.

**Ms Poole:** I ask the parliamentary assistant, looking at a five-year period over which there would be a total of a 15% rent increase above guideline, if the landlord is to do the repairs in one fell swoop at the beginning of the five-year period, and we have a five-year period over which these rent increases are phased in year by year and the full costs of the landlord are allowed to go through that, what is the difference between that scenario where the landlord does the same thing for a three-year period and then in the third year does more repairs, more construction, goes back to rent review and gets full cost recovery for the next three years?

We are not talking about a difference in cost recovery. The cost recovery is going to be the same. If you are



talking about the Residential Rent Regulation Act, you are right, because the penalty was in the first year. There was a 1% deduction of the rents off the landlord's application for the first year they applied. This tended to encourage landlords to front-end-load everything to that application. But we are not talking about that. The 2% that a landlord must justify applies in every single year regardless of whether the landlord goes once or twice to rent review. There is no difference financially.

All that is of difference is in making sure there are fewer times the tenants have to endure construction, fewer times the tenants have to go back to rent review and fight an application, fewer times the landlord has the expense of putting in an application. In the end, it is not a matter of the tenants paying more rent. The tenants would not pay one penny more rent if they had a four-year carryover, making five years total, over the situation where a landlord can apply, have three years, and then go back for additional money. I do not know quite where you think—

1600

**Ms Harrington:** Our assumptions that we are starting from are different.

**Ms Poole:** Yes, Mr Chair, my assumptions, I think, are correct, and I do not think the parliamentary assistant's are.

**Ms Harrington:** I believe your assumption might be that whatever cost for this repair that we are discussing, you are saying you are going to break that up and do the maximum amount in the first three years and then go back to the rent control officer and go for more above-guideline increases for that same repair.

**Ms Poole:** No. He did the repair, a different repair.

**Ms Harrington:** I am saying that if you are doing a repair, the maximum it can go is that three years. If the landlord is going to do that, he does not get continuous pass-through. He must share in the cost of that.

**Ms Poole:** Perhaps it would help the parliamentary assistant if I gave her a specific example. I had a building in my riding, 88 Erskine, which had a 25% rent increase, so it was 20% above guideline. It had not had a rent increase above-guideline for something like 11 or 12 years. The landlord went on a major binge of renovations and capital repairs, and I think most of the things, not all, but the vast majority of the things in that 25% would have qualified under your list of necessary repairs. They replaced the elevators which were 25 years old, put in new thermopane glazed windows, changed the heating system, put in a new security system. We are not talking luxury-type repairs by and large.

If you take that same scenario—let's make it easier. Let's say it was 15%. You have a landlord who has this list of repairs that, if it was all added up, would come out as a 15% rent increase. Under your scenario the landlord would do 9% above-guideline worth of repairs over the three years. Then the landlord would begin his construction anew and put the further 6% in and instead of having in the five-year period one set of construction, one rent review application, one battle with bureaucracy and being able to phase it out over those five years, the landlord has doubled up on what is happening.

I put to you that it is not only the landlord, it is the tenants, because tenants do not like fighting rent review applications, and it is going to be no easier under your system, I can tell you, than it was under the Liberal system. This is just as complex, if not more complex. It has with all the amendments 130 clauses, over 200 amendments. It is going to be extremely difficult for tenants.

**Mr Jackson:** Wait until you see the regulations.

**Ms Poole:** And we have not even talked about the regulations. It is going to be extremely complex for tenants to understand, and you are saying tenants have to go back and fight twice.

Under your legislation the way it is now, and I would like Ms Parrish to correct me if I am wrong, my understanding is there is an application the first year and then the landlord has to go back in the second and third year of carry-forward and again show that the repairs have been done and nothing has changed in the meantime. Is that correct? There is only one application?

Interjection.

**Ms Poole:** Even better. Thank you. That is very helpful information for me. This means instead of a landlord and tenants going once, they now have to go twice, yet there is no difference in the amount of rent the tenants would pay over that five-year period because the cap is still in effect. The tenants would end up paying the same rent but they have all these hassles they have to go through twice. I really do not see the justification for limiting the cost pass-through.

**Mr Owens:** Earlier in the week or late last week you mentioned a study, maybe on another issue, that the ministry had done with respect to cost recovery and the amount of time required by landlords, and three years was found to be quite adequate. Did we talk about that? Maybe Margaret made a comment around that.

**Ms Parrish:** We talked at some length yesterday about whether three years was adequate. We talked about the sampling we had done, the total amount of money and so on. We discussed that at some length yesterday for garage repairs, because that was the item people seemed to be quite concerned about as possibly requiring more money than was available in the system.

We have also tabled with the committee and discussed in the past material we prepared that showed how much money is available for capital in this system with a two-year carry-forward. We estimated the total amount of money for capital repairs needed over the next 10 years was between \$4 billion and \$7 billion, and this system actually generates about \$8.7 billion over the same 10-year period. We talked about the sampling we had done which showed there were very few repairs that were likely to need more than this much carry-forward. There are cases that occur in which there would not be complete recovery, but in most cases, the extra carry-forward period, the first year plus two more years, is sufficient to pay for the repair.

**Mr Owens:** That leads me to my comment generally on the amendment and the particular philosophy that has come from members opposite. If I was to go out and make an investment, whether it is in stocks or whatever—if I



was not a parliamentary assistant, I could do things like that—and there were costs associated with the maintenance of that investment such as brokers' fees, financial advice charges etc, other than perhaps through some tax loopholes, there is no method of recovery of costs for people doing business.

I see the member for Eglinton looking almost as if she is going to pass out here. I certainly hope it was not anything I said. All of a sudden we want to ensure there is no cost of doing business, there is no cost of maintaining the investment, which is exactly the kind of philosophy the member for Eglinton has urged we take in terms of the construction example.

1610

In terms of the construction example, how many buildings are there out there that undertake more than one major capital project per year? If you know, tell me, because I do not know. It does not make sense, from an investment point of view, to have that kind of capital expenditure occurring at a time when there is concern for revenues. If capital construction is going to take place, I would suggest that it would happen on a yearly basis whether the pass-through was here or not.

As I say, I do not understand why there is this necessity to feel we have to somehow prop up and ensure that the investment is at no cost to the investor while the investor profits from the rents collected on the buildings. I will certainly look forward to the response from the member for Eglinton.

**Mr Jackson:** Mr Chairman, since you did not rule that the parliamentary assistant was not off topic when she referred to when we were going to understand about pass-through, I wish to comment on that, because I think it is a very sensitive and timely point, germane to this section and appropriate to what several people in her government have said.

The report we received from the then Minister of Housing's first meeting with landlords in this province was that there would be none, absolutely zero pass-through. I just want to caution the parliamentary assistant to assure us that this is some sort of Waterloo for you. We have been told this in the past. We know the story that Mr Cooke, the then minister, capitulated because the reality of the enterprise of producing housing and maintaining it finally became like a light, cleansed his awareness and allowed your government to move on this issue.

Then we come to the Premier's announcement last night where he, in all fairness and honesty, said, "We want to hear from you about how we can get our economy going." I think Ms Poole has presented a very relevant motion to the very question the Premier asked last night. Given this government's track record of stating: "Here's a line. We're not going to move off it. Trust us; believe us; we're not moving"—I would not even raise this, but the parliamentary assistant made such a point of it.

I do not know if you have read the Treasurer's document where he talks about, "We may have to gut and review non-profit housing"—which is rental stock—"in this province." Seniors' property tax grants and the drug plans—he

had a whole list, but he had right in there about all this non-profit, government-built housing he may have to gut. It begs the question that the government would be wise to reflect on this section at some length, given that it positions itself as an opportunity to do several things, which Ms Poole has most eloquently presented for all members of the committee.

**Ms Poole:** On numerous occasions.

**Mr Jackson:** Yes. But again the Premier said that he wanted to listen to people like Ms Poole and landlords and tenants who were saying—

Interjection.

**Mr Jackson:** No, he was talking to the entire province last night. This was not a caucus meeting where everybody agreed. I got all the news articles today, and we know that not everybody agreed, but he was talking to everybody.

The point is that certain renovations, certain necessary repairs will require differing degrees of pass-through. I wish to suggest to the parliamentary assistant that the Treasurer, I am sure, and your Premier, I am sure, will want to examine the implications of this legislation, as they will others. Since your absolute commitment, as enunciated at election time, you have capitulated on several fronts. You still have been able to keep together and retain some integrity of a bill based on some elements of your commitment to tenants.

However, the Premier was in fact trying to tell people about the need for everyone to participate in solutions, and one of the ailing situations in our communities is the necessary, required work in our buildings that cannot and will not be done as a result of this legislation. Those, as you know from the odd occasion when there have been rallies about this legislation and unionized tradespeople who lost large orders—I mean these are the kinds of people who are hoping your government will continue in its pattern of capitulating on many of your commitments.

This may be an appropriate section for you to consider. A 20-minute recess to call the minister to see if she has had a change of heart in the last 24 hours may even be in order, but that is entirely your call as the parliamentary assistant. You never know. I sense that the Premier might even listen to some of these suggestions.

**Ms Harrington:** Mr Jackson, I prompted you to do quite a bit of thinking there. The point I would like to make a little more quietly is very simple, and that is our belief that the landlord as well as the tenant should be paying for these capital repairs. That is our position and that is what this particular part of the bill speaks to, I believe.

**Ms Poole:** I had a number of comments to make regarding Mr Owens's revelation. He gave the example of how others cannot pass on business costs, that they have to eat business costs. I was quite surprised that Mr Owens did not realize that in this legislation the NDP government removed the right of landlords to pass on the cost of doing business, that consultants' fees, lawyers' fees or anything of that nature were eliminated from this legislation by his government. When we talk about repairs to a building, they are not the cost of doing business. The repairs to a



building are the cost of ensuring that the building does not crumble and that our aging housing stock is maintained.

When Mr Owens says that he cannot conceive that landlords would want to do more than one major capital project in a year, if you look at capital projects, normally landlords do a number at one time, because they do not want to go back to rent review every single year. They do not want to go any more than they have to. If they are putting in new windows, then it is quite likely they are also going to be doing the elevators, because for many of these buildings, particularly in the 20- to 30-year age range, most of the things break down around the same time and need replacing at around the same time. If you look at the amortization schedules for things such as elevators and boilers and things like that, they are all very similar. They break down around the same time.

Landlords want the best price for what they are doing. You get a better price if you have your repairs or renovations done at the same time. So it is not only conceivable but quite normal for landlords to do a number of repairs in the same year. They do not want their superintendents spending all their time supervising various projects in various years; they want to get it done and over with.

1620

Mr Owens talked about the sheet presented by the ministry yesterday and said his understanding was that in most cases the carry-forward and the cap would be adequate to meet the needs. I would point out to him that this particular document tabled by the ministry referred to one item only, which was underground parking restoration. Because it was prepared for another reason, it was not even a very accurate one for our particular purposes. It gave us a snapshot. Quite frankly, where I felt it was completely lacking was in the buildings that have between 40 and 130 or 140 spaces. Definitely, those are the buildings where the cost of doing that underground parking garage may be very problematic as far as cost pass-through, whether there be sufficient funds to do it. But that is one item as well.

What happens if it is the boiler that has been breaking down and the landlord wants to replace it? As you know, that is a very expensive item. If the underground parking garage takes up all the allocation, then the boiler cannot be fixed. I think most tenants would rather have the carry-forward extended, and have the right to have that boiler replaced and the underground parking garage repaired at the same time. It does not make any difference to the tenants in rent increases whether that construction is done once or twice. It makes a difference to them in hassle, it makes a difference as far as having to fight a second rent review application, but it certainly does not make any difference to the amount of rent increase.

Along the lines of what Mr Jackson was saying, I would think the government would want to encourage the construction now. You would want to front-end-load the construction. As we heard through the Bill 4 hearings, people came and pleaded to this committee to change the legislation. The construction industry is reeling and it could do with a boost right now. What a boost that would be to say to landlords: "Do some of those necessary repairs that have to be done now rather than doing some now, some

three years from now and some in six years. Get those people back to work."

I really do not see why the government is objecting to extending the years of carry-forward. It makes good business sense, it makes sense from a tenant point of view, it makes sense from the point of view of encouraging jobs in construction. Certainly it would be a good signal to the business community that this committee had listened in some way, shape or form.

I really hope the minister will rethink her position on this. I would be more than willing, if the parliamentary assistant and Ms Parrish would consider it, to stand down this section until tomorrow morning so we could see whether the minister will rethink her position on this particular section.

**The Chair:** Do I have unanimous consent to stand this section down? No.

**Ms Harrington:** No. The minister's position is very clear.

**Mr Owens:** Without wanting to belabour this any longer or confuse the member for Eglinton any further, I do take issue with her comments around my lack of realization that the consultants etc had been pulled out. Ms Poole has taken a very narrow view of what business expenses would be called and moves from business to the warm and fuzzy altruism, "It is not a business expense to maintain the building. It is to maintain the integrity of the building so tenants have a nice, wonderful place to live."

It is simply the property owner maintaining his or her investment, and that is a cost of doing business, to ensure that the building is there and functional, as well as providing housing for tenants. It is still an investment, no matter how you call it or how you describe it. It is a business proposition for an individual or a number of individuals to invest in property. It provides housing for individuals, but at the end of the day it is still a business investment, and there are expenses to doing business. There are expenses in all kinds of investment and that is the point I was trying to make.

**Ms Poole:** I am very pleased that Mr Owens took the opportunity to clarify what exactly he meant by the cost of doing business. I am very appreciative of the fact that at least one member of the NDP government understands that it is a business and it is an investment.

This is the government that released a paper called Housing Framework, which on page 55 made the astounding statement, "Some people are in the rental business because they want to make a profit." It quite floored me when I read that sentence. I thought: "This means that some must be in because they either don't want to make a profit or they're philanthropical. They just like to have people come live in their building." I could not quite figure it out at the time. I thought, "I have to reassess my views of this particular issue," because I thought most people, if not all people, who went into the rental housing market as an investment did it because they wanted to make a profit.

**Mr Callahan:** They want a write-off.

**Mr Abel:** That is a possibility too.



**Ms Poole:** It is quite refreshing to see that there is at least one member of the NDP government who is considering the fact of business and that it is an investment. But I would put it to the members of the NDP that right now that particular investment is on very shaky ground. We have had real estate agents and the Canadian Bankers Association and other presenters who have said that the value of these apartment buildings has devalued by some 25% to 50%. Estimates were as high as 50%, but certainly in the 25% to 35% range.

**Mr Abel:** The value of houses went down as well.

**Ms Poole:** The value of these apartment buildings went down not primarily as a result of the recession, because income-generating property is relatively well buffered from the recession by the fact that income-related properties are valued by the revenues coming in, as opposed to some of the things that might dictate what a house value would be. That is why, if you look at the 1981 downturn in the economy—I am not sure we would call it a recession, but certainly the 1981 lull—apartment values weathered that particular storm better by far than house values because the revenues stayed constant. That is what dictates the resale value of an apartment building.

When you talk about landlords and their investments, I think many landlords right now are just filled with despair. They are very frustrated and feel hostile towards what the NDP government has done. To many of them, this is their life savings. Most of the landlords in the province are small landlords. If you look at the statistics Ms Parrish—

**The Chair:** Ms Poole, I think we are wandering a bit. If we could come back to 21(5)—

**Ms Poole:** Are we? I was just trying to kill time until 5 o'clock.

**Mr Owens:** I thought we did not make that distinction any more between small and large landlords.

**The Chair:** Do you want to get on the list again, Mr Owens?

1630

**Ms Poole:** I would say for the edification of some members of the NDP caucus that the distinction between small and large landlords has been made time and time again by the government and by members of the opposition. Landlords are different than buildings, by the way. I might stress that.

At any rate, what it comes down to is that this government wants to encourage people to maintain their investments, it wants to encourage landlords to keep up their properties, but if a building has devalued to a stage where the landlord has no equity in that building and in fact is in a loss position, I think it is somewhat naïve for the government to assume that landlords are going to put their own moneys into repairs. Cost recovery, therefore, becomes very important.

It appears unlikely that the government is going to bend on this particular issue since the parliamentary assistant has said they will refuse to stand it down for reconsideration by the minister. So I do not see any point in delaying the vote on this particular matter.

**The Chair:** The Chair has a question. I am concerned with the mechanics of this and I would just like Ms Parrish to explain the mechanics of the pass-through so all members understand exactly how this section works. For example, the landlord may have a 9% cost pass-through justified. I do not understand completely how the 2% that is within the guideline would be applied, how he would be able to justify 2% for the second and third year which may or may not be there in the second or third year.

**Ms Parrish:** If you want cost pass-through in your second year and you have made an application that justifies more than the 5% you would get in year one—in your example about 4% more—you have two choices. You can ask rent review services to issue a notice of cost pass-through and you can simply take the 4% in the next year. In this case you add 2% to the guideline and the tenants pay that. If you have an additional repair, say in the second year the landlord has an increase in taxes or another repair he is doing in that year and he wants to get the remaining 1% above-guideline, then he makes a new application and the notice of cost pass-through is not issued.

They have a choice in that particular kind of situation. They can either automatically take the increase they have been given under the previous application without any further application—they do not have to apply in year two—or if they think they can justify getting more and they still have room in their cap, they can apply and get more money.

**Ms Poole:** They could get that plus any new repairs.

**Ms Parrish:** Yes, any new repairs or extraordinary cost increases, taxes or heating, up to the maximum of 3% above-guideline.

**The Chair:** It is conceivable then that the landlord could be at rent control every year within the three-year period depending upon what additional expenditures he or she may have.

**Ms Parrish:** Yes. As in the current system, they can apply every year. There are some landlords who do apply every year. They can continue to apply every year. However, if they have taken their full cost pass-through—let's take the scenario where the landlord has just applied for 15%. He is going to get 5% the first year, 5% the second year and 5% the third year. Then he cannot reapply in the second and third year. The carry-forward is simply issued because he has nothing left to apply for, but if he has some room left in his cap, he can apply.

**The Chair:** Using my example of 9%.

**Ms Parrish:** He would have 1% left in the second year, because he has taken 5% and he can carry forward 4%.

**The Chair:** But say it is 11% in the first year, because he has already done some capital work justifying the 2%?

**Ms Parrish:** If it was 11%, he would have completely filled up his cap in the second year. So he would not be able to apply until the third year, where he would have room left over in his 3% above-guideline cap. It would be 5% in the first year and 5% in the second. Then he has



only 1% left over at that time, so he could reapply if he can justify more.

**The Chair:** Just to be clear, you are telling me that if in that second year something unpredictable happened in the building and he ends up spending 2% more, if he has not gone to rent review, he does not have the option of carrying the full amount through the three years?

**Ms Parrish:** If he has taken the full amount in year one or year two, he cannot apply for more. He has to wait and apply in year three for what he is spending in year three, because he is only entitled to 3% above guideline.

**The Chair:** Thank you. I think I understand that.

**Ms Poole:** Following from that—and pardon me if this has been answered at some previous time—with the 2% that has to be justified if a landlord is going for an above-guideline increase, at various stages of the Bill 121 hearings we seemed to be getting mixed messages, certainly from witnesses' perspectives if nothing else, about whether that 2% justification would have to apply under section 15. I think it is section 15 that lists the criteria for necessary repairs. When the landlord justifies the 2%, when he is going for an above-guideline increase, does that 2% have to be justified according to section 15?

**Ms Parrish:** Yes.

**Ms Poole:** If the landlord put in new carpeting, for instance, then that could not come out of the 2%. That would not apply to the 2%.

**Ms Parrish:** No. You are talking about a situation where the landlord is asking for an above-guideline increase?

**Ms Poole:** That is right.

**Ms Parrish:** He has to justify the full 5%.

**Ms Poole:** With regard to the type of repairs and maintenance that previously under Bill 51, the Residential Rent Regulation Act, were allowed and accepted as a legitimate expense, such as replacing the carpets, for instance, or fridges and stoves—they are en suite so that is not a good example—that type of expenditure, the landlords must use their own funds to pay for those things. If the landlord does not go for an above-guideline increase, he can use that 2% however he chooses, but if the landlord wants to do major repairs over and above this, which would lead to an above-guideline increase, the landlord is restricted by the type of repairs for which he could get a cost pass-through for the 2% guideline.

**Ms Parrish:** The bill indicates that if you want more than the guideline amount, you must do more: you must justify, you must get permission. Otherwise, what would happen in some cases is that tenants would pay indirectly for those very unnecessary repairs they do not want. Landlords would use the 2% for the things the tenant does not want such as microwaves or marble or whatever, and then say, "But if you want your elevators fixed, then you have to have this 3%."

The view is that if landlords apply above-guideline, the policy the government feels was appropriate would be that they would have to fully justify what they were asking for. If they were not asking for any additional money, other than the guideline, the quid pro quo essentially was that

there would be a lesser requirement of justification. However, the landlords must still meet basic standards, must not have any outstanding work orders and of course, if they do have inadequate maintenance, are vulnerable to an application by tenants.

1640

**Ms Poole:** In other words, the ministry is using that particular lever to discourage landlords from applying for above-guideline increases, because it says to the landlord who does not do anything: "You can spend the 2% however you want. You can take it for profit, you can put in new carpets, you can give it away to charity. But if you go for an above-guideline increase, then in that particular case you have to justify it. You have to justify not only that it was spent on capital repairs, but on the very specific capital repairs outlined in the legislation." What the ministry has basically done is say, "We won't make landlords justify it unless they go to rent review."

**Ms Parrish:** I cannot speak about the issues of discouragement or incentive, as I think those are comments beyond the province of a civil servant. What I would say is that the view of tenant groups was that all capital should be justified and that landlords should not get anything except justified capital. I will not go into the position of landlords. You have all heard that and you are certainly very knowledgeable about the various positions.

I guess the compromise approach has been that if landlords are taking only the statutory guideline, they do not justify. It is a pragmatic response in a sense, that if you are not asking for extra, the rules might be a little less stringent. Where a landlord wants to take advantage of the ability to get more money, it was felt appropriate that the money should be channelled to the area of necessary repairs, which almost everyone has indicated is where people want that money to go to in order to avoid the problem which has occurred under Bill 121, that tenants have been paying for repairs they neither want nor view as necessary. This is essentially a pragmatic approach to find a medium ground to very divergent views on the issue of capital repairs.

**Ms Poole:** Probably all this discussion has become rather moot, because I do not think very many landlords are going to go to rent review for above-guideline increases, as I do not think there are very many landlords who are going to bother to do the repairs at all.

**Mr Owens:** That is not true.

**Ms Poole:** Just look at what you have said about the landlord who does what we have all agreed in this legislation is classified as necessary, justifiable repairs. The landlord who does this and goes to rent review first of all has to face the possibility of a rent penalty, face a possible reduction of maximum legal rent. They cannot use the 2% for non-eligible capital, as landlords who do not go to rent review can; they are restricted to the list in section 15.

They have been told there is a major change in attitude by the rent officers. I think Ms Harrington spoke quite eloquently, and I know Mr Mammoliti did, about the change of attitude, and how the attitude was going to be the big difference with the rent officers.

**Ms Harrington:** Give credit to the attitude of the landlords as well. I think you are denying they are reasonable.

**Ms Poole:** When all is said and done, I do not see why a landlord wants to take the risk of putting major moneys into a building, particularly when he is going to have trouble from financial institutions in getting the loans to begin with, particularly when the buildings have been devalued. They do not have much equity in many cases to begin with. When Ms Harrington makes the comments she does about underselling the attitudes of the landlords of this province and not giving them the credit that is due, I am saying the landlords of this province are probably pretty smart.

**Ms Harrington:** I hope they are well intentioned, as well.

**Ms Poole:** Not to say they are not well intentioned, but you reach a certain point of frustration and irritation and despair in some cases that you just give up. I think there are a lot of landlords who figure they can outlast this government, which may not be all that hard. They will wait for a fairer government, which again will not be all that hard, that they think will have a fairer system, that will be fair to tenants and fair to landlords.

**Ms Harrington:** Just one point. A 6% increase in 1992 is a guaranteed increase, is it not, in what their income will be on their buildings? When you think of what the economy is like in this province, there are not too many business people who are guaranteed a 6% increase in their businesses.

**Ms Poole:** Just in response to the parliamentary assistant's comments, I am not sure I could say in this very difficult economic climate, where there may be a number of tenants who cannot pay the rent and leave the building with major rents unpaid, that these increases are guaranteed to landlords.

**Ms Harrington:** That is a good point.

**Ms Poole:** I think landlords will face their own set of economic realities, just as tenants will, and other people will, in these dire economic times.

Mr Chair, do you have anybody else left on the list? Could we make a bargain that if we took the vote we could adjourn and not go on to a new section? I do not think Ms Parrish is going to last. I think she is feeling sicker by the moment. She sounds incredibly articulate, given the difficult circumstances.

**The Chair:** Shall subsection 21(5) carry?

**Mr Abel:** I would ask for an adjournment.

**The Chair:** Twenty minutes? The committee will take 20 minutes. Ten?

**Mr Jackson:** You can call an adjournment or call the vote, Mr Chairman.

**The Chair:** They have the right to ask for 20 minutes, but the committee adjourns at 5. I suggest we have the vote at 10 o'clock tomorrow morning.

**Mr Jackson:** You will entertain a motion at 10 in the morning?

**The Chair:** No, the question has been placed.

**Mr Jackson:** There has been a call for a delay of 20 minutes.

**The Chair:** Yes, and the committee adjourns at 5 o'clock.

**Mr Jackson:** So you are ceasing that motion and you are adjourning?

**The Chair:** The vote will be taken at 10 o'clock tomorrow morning.

**Mr Jackson:** The committee shall reconvene at 10 in the morning.

**The Chair:** Exactly, Mr Jackson, and I appreciate your help.

**Mr Jackson:** The first order of business cannot be the vote.

**The Chair:** It will be.

**Mr Jackson:** Then deal with this motion.

**The Chair:** The committee is adjourned until 10 o'clock tomorrow morning. The vote on this section will take place at 10 o'clock tomorrow morning.

The committee adjourned at 1649.



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### STANDING COMMITTEE ON GENERAL GOVERNMENT

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**Vice-Chair / Vice-Président(e):** McClelland, Carman (Brampton North/-Nord L)

Abel, Donald (Wentworth North/-Nord ND)

Bisson, Gilles (Cochrane South/-Sud ND)

Harrington, Margaret H. (Niagara Falls ND)

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O'Neill, Yvonne (Ottawa-Rideau L)

Poole, Dianne (Eglinton L)

Turnbull, David (York Mills PC)

Winninger, David (London South/-Sud ND)

**Substitution(s) / Membre(s) remplaçant(s):**

Callahan, Robert V. (Brampton South/-Sud L) for Mrs Y. O'Neill

Frankford, Robert (Scarborough East/-Est ND) for Mr Marchese

Jackson, Cameron (Burlington South/-Sud PC) for Mr Turnbull

Morin, Gilles E. (Carleton East/-Est L) for Mr McClelland

Owens, Stephen (Scarborough Centre ND) for Mr Bisson

White, Drummond (Durham Centre ND) for Mr Winninger

**Clerk / Greffier:** Deller, Deborah

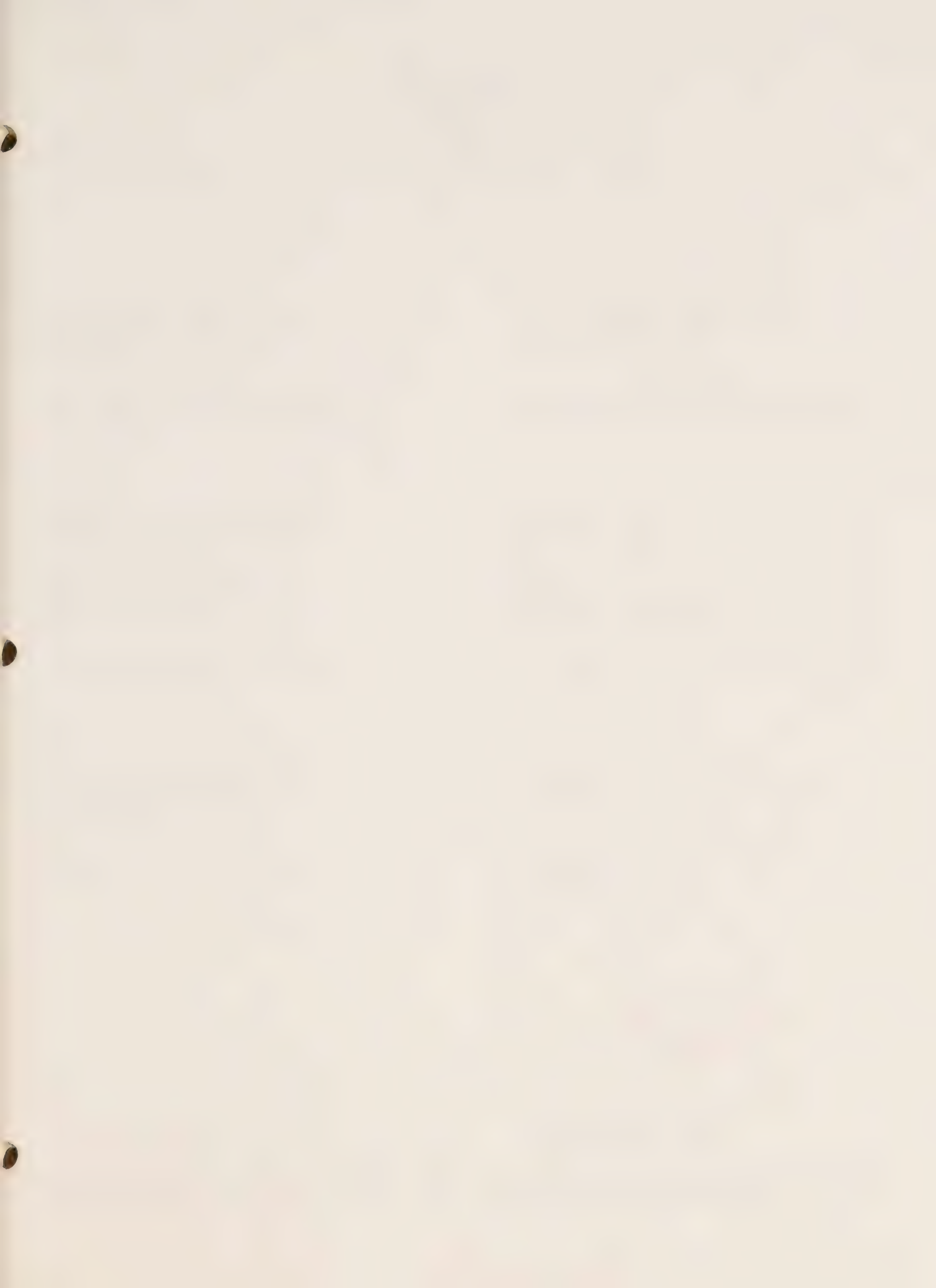
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## Legislative Assembly of Ontario

First Intersession, 35th Parliament

## Official Report of Debates (Hansard)

Thursday 23 January 1992

### Standing committee on general government

Rent Control Act, 1991

## Assemblée législative de l'Ontario

Première intersession, 35<sup>e</sup> législature

## Journal des débats (Hansard)

Le jeudi 23 janvier 1992

### Comité permanent des affaires gouvernementales

Loi de 1991 sur le contrôle  
des loyers

Chair: Michael A. Brown  
Clerk: Deborah Deller

Président : Michael A. Brown  
Greffière : Deborah Deller

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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON GENERAL GOVERNMENT

Thursday 23 January 1992

The committee met at 1007 in committee room 1.

### RENT CONTROL ACT, 1991

#### LOI DE 1991 SUR LE CONTRÔLE DES LOYERS

Resuming consideration of Bill 121, An Act to revise the Law related to Residential Rent Regulation / Projet de loi 121, Loi révisant les lois relatives à la réglementation des loyers d'habitation.

**The Chair:** The standing committee on general government will come to order. The committee is reviewing clause by clause Bill 121.

#### Section 21:

**The Chair:** We are presently dealing with a government amendment to subsection 21(5) as printed. I believe we have a request for a recorded vote.

**Ms Poole:** On a point of order, Mr Chair: I know yesterday Mrs Marland said that if she was not here on time the committee should proceed without her as a general rule, but I am not quite sure she meant that if there was to be a vote. I wonder if the clerk could check with Mrs Marland's office and ascertain whether she will be here shortly.

**Mr White:** On the same point of order, Mr Chair: I have brought this matter to your attention on several occasions. I refer you to the transcript from yesterday's proceedings which clearly indicates, in your own words, that there is to be a vote at 10 o'clock, not 10:20. If the opposition members do not wish to appear at 10 o'clock, that is certainly their right and their privilege. However, when they know there is to be a recorded vote, I think it is their duty, if they want to represent their parties and their constituencies, to be here, as we are.

**The Chair:** We do have a quorum. I will treat this as being similar to a 20-minute request that was actually made yesterday, and that means that at the precise time we will take the vote. All those in favour of subsection 21(5)?

The committee divided on whether subsection 21(5) should stand as part of the bill as reprinted, which was agreed to on the following vote:

#### Ayes-6

Abel, Haeck, Harrington, Mammoliti, Owens, White.

#### Nays-3

Daigeler, Morin, Poole.

**The Chair:** Now, subsection 21(6).

**Ms Poole:** Just before we proceed with dealing with the business of the day, I wonder if I might make some comments about the process in this committee and the lack of progress in getting through this legislation. If the government would bear with me for my comments, which will

be quite brief, I think it will be pleased with what I have to say, or at least with part of what I have to say.

This legislation is quite extensive. We have talked about 130 clauses and 200 amendments. When the government tabled its amendments, only two of what were priority amendments for the Liberal Party were included in those amendments: first, to have one guideline increase and not the confusion of two guideline increases, and second, the cost-no-longer-borne section which the Liberal Party has been pursuing for some time.

Since that time we have all tabled our amendments and there seems to be a trend. The first is that all government amendments pass, and with only two exceptions, all opposition amendments fail. One exception was that by mistake, because the government did not have enough members, Mrs Marland's amendment passed. Second, there was a minor amendment by the Liberal caucus with regard to clarifying language for sections 25 and 26. It would appear to me that if we are to get to what I consider some of the most substantial parts of this bill, which include the right of tenants and landlords to have an automatic hearing, the appeals process, the standards board, some of the qualifications regarding work orders, we are not going to get to them at the rate we are going.

I am just going to notify the committee that on future government amendments, I plan to speak extremely briefly, to say whether the Liberal caucus will be supporting the amendment or not, give the reason in a couple of sentences and then withdraw from the debate. If the government amendments are going to pass regardless of the opposition comments, then it seems to me to be just taking up needless time. The amendments we will give substantive debate to are the opposition amendments, in particular on the sections I just outlined. I am hoping this will move the procedure along considerably.

**Mr Owens:** I thank the member of the Liberal Party for her comments. Notwithstanding the stated reasons for her proposed brevity, I think we on this side will also undertake to keep our remarks short on matters that may not appear to be issues of substance. We certainly look forward to debating those issues such as you have outlined as being substantive.

**Ms Harrington:** I would also like to thank Ms Poole for her very reasonable approach.

**Ms Poole:** Just one final comment: My comments are of course subject to the fact that George does not try to bait me.

**The Chair:** There is a Liberal amendment to add subsection 21(5.1) to section 21.

**Ms Poole:** This is an amendment which I believe related to the cost-no-longer-borne amendment we had tabled. Since the government has put in its own provisions regarding

costs no longer borne, the Liberal caucus will withdraw this particular amendment.

**The Chair:** Subsection 21(6) is as printed, I believe, in the original legislation. Are there any questions, comments, explanations or amendments?

**Ms Harrington:** I would like to comment. The repayment provisions related to the amount set out in an order for an above-guideline increase are established in subsections 21(6), (7) and (8). They are similar to provisions in Bill 4. In subsection 21(6) the order may specify that the landlord or tenant pay moneys owed to each other as a result of an order.

**Ms Poole:** This seems to be a very reasonable section and the Liberal caucus will be supporting it.

**The Chair:** Shall subsection 21(6) carry? Carried.

**Ms Harrington:** Subsection 21(7): When an order has been delayed at least three months to the first effective date of rent increase, it may stipulate that the outstanding rent may be paid over a period of 12 months in equal monthly instalments. The tenant still has the option of paying the entire amount in a lump sum. The tenant may continue to pay in instalments where the order contains provision, even if the tenancy is terminated.

**Ms Poole:** Mr Chair, just on a procedural question, the Conservatives have an amendment regarding subsection 21(7). Would it be appropriate to stand the section down until they return?

**The Chair:** I think that would be agreeable. We need unanimous consent.

**Ms Harrington:** Agreed. Hopefully they will show up.

**Mr White:** Mr Chair, the only concern I have is the absence of the Conservative members. Has there been any registration of an intent to boycott the session, or to show up?

**The Chair:** The clerk will be contacting the Conservative caucus.

**Mr White:** My concern with standing down this issue, which I think we could, is simply that the whole bill could be held up if the Conservatives do not show up.

**The Chair:** We need unanimous agreement and that is what the Chair is asking for, unanimous consent to stand this section down.

**Mr White:** I am sorry; I still have that concern.

**The Chair:** If you say no, that is fine, and we will proceed. Are you saying no, Mr White?

**Mr White:** Ms Poole might be able to add something here.

**Ms Poole:** Mrs Marland spoke to me about the problem, and the problem is that in her other critic responsibility for the Conservative Party she has to be in room 151 dealing with the waste management bill part of the time. I understand it is a logistical thing. I think it is unfortunate Mr Jackson is not here, or one of them, but I do feel under the circumstances it might be somewhat unfair to have their amendment fail due to their absence.

**Mr White:** I would certainly agree, but your understanding, Ms Poole, is that the reason for their absence is simply the double duty they are now under? To the best of your knowledge, there is no intent to boycott?

**Ms Poole:** No.

**Mr White:** Thank you. I will agree then.

Agreed to.

**The Chair:** Subsection 21(8).

**Ms Harrington:** I will give an example. I have already stated that under subsection 21(8) the tenant may continue to pay in instalments where the order contains such a provision, even if the tenancy is terminated. For example, if an order is issued four months after the first effective date of rent increase and the tenant owes the landlord \$300, the order may provide for spreading the payments over 12 months. In this case the tenant may elect to pay \$25 per month over the ensuing 12-month period.

**The Chair:** Questions or comments? Shall subsection 21(8) carry? Carried.

**The Chair:** Ms Poole, I think we will entertain your motion now, if you would like to read it into the record. It is to add section 21.1.

**Ms Poole:** Yes, the Liberal caucus does have an amendment creating a new section 21.1. I apologize for the fact that it is hand-printed instead of typed, but it was something that came out of yesterday's discussion.

1020

**The Chair:** Ms Poole moves that the bill be amended by adding the following section:

"21.1(1) Where a rent officer orders a reduction in maximum rent, a landlord may bring an application to increase the amount of the maximum rent by the amount it was reduced.

"(2) The rent officer shall order an increase in maximum rent equal to the amount of the reduction if:

"(a) the landlord demonstrates that the standard of maintenance or repair of the rental unit or of the whole residential complex which was the subject of a previous application under section 25 is in compliance with the applicable municipal standards or the provincial standard; or

"(b) the landlord has resumed or restored a service or facility provided in respect of a rental unit or of the whole residential complex."

**Ms Poole:** My comments on this will be very brief because I think we covered this in great depth yesterday. It became apparent when we looked at a previous section, subsection 21(3), that there was no remedy for the situation where there had been a reduction of a maximum rent by the rent officer because there had been a loss of service or because of inadequate maintenance. In the event the landlord did remedy the situation and restored the service—and this is not a temporary loss; this would be a service that was restored after the six-month period—or if the building was brought into compliance and the landlord had remedied the situation, then the landlord would have the right to bring an application and the rent officer would then decide, based on the evidence, whether the landlord had remedied the situation.



What this will basically do is provide that option in fairness. I do not see that it is unreasonable. We want to give incentives to landlords to restore service when it is withdrawn and also to ensure that adequate maintenance is preserved for the building. To me, this is such an incentive. Those are the only comments I have.

**Ms Harrington:** I would like to comment briefly on Ms Poole's amendment. It is clearly not the government's intention to do this. Ms Poole has stated this is an option of fairness. I believe it is a perceived option of fairness. In our bill and the regulations that go with it, it does state that this withdrawal of service is permanent. I believe this covers the intention of the government and in fact will be fair and will create the balance I was speaking of yesterday.

**The Chair:** Further questions or comments to Ms Poole's amendment?

**Ms Poole:** I request a recorded vote.

The committee divided on Ms Poole's motion, which was negatived on the following vote:

**Ayes—3**

Daigeler, Morin, Poole.

**Nays—5**

Abel, Haeck, Harrington, Owens, White.

**The Chair:** Mrs Marland, we have stood down subsection 21(7) because your party has an amendment to it, if you would like to move your amendment to subsection 21(7).

**Mrs Marland:** Thank you very much, Mr Chairman.

**The Chair:** Mrs Marland moves that subsection 21(7) of the bill be amended by inserting after "owing" in the next last line "plus interest".

Do you wish to provide an explanation for the amendment?

**Mrs Marland:** Yes. This amendment evens the playing field between tenants and landlords by according them both the same privileges.

**Ms Harrington:** I would like to clarify. Did you say create a balance? I missed that.

**Mrs Marland:** It is a very much-overused phrase that is in vogue right now. Actually I do not use this phrase because I am tired of hearing everybody use it. It is like the word "networking" and all that stuff that went on a few years ago. It is called leveling the playing field, but it is just as easy to say giving both tenants and landlords the same equal opportunity of privilege when it comes to this particular section.

**Ms Harrington:** I want to have staff clarify when interest is collected and whether or not there is fairness on both sides here. Colleen, could you clarify when that is collected and when it is not collected?

**Ms Parrish:** The purpose for the imposition of interest requirements on landlords essentially relates to the fact that where the landlord owes the tenant money, it is because there has been an illegal collection of rent. The provision of interest encourages the landlord to pay promptly, whereas if you have no interest provision, the landlord can

obviously benefit from not repaying promptly. In this circumstance you have a situation where the tenant owes the landlord money, but it is not due to the illegal action of the tenant. The tenant simply owes the money because there has been some period of time it has taken to resolve the case. Perhaps people have asked for evening hearings or whatever and some time has passed. I think there is a distinction in the bill between a situation where there has been an overcharging of rent and interest accrues and this situation, in which in some cases the tenants may not even know what they owe because there has not been an order. That is my understanding of the distinction in the statute as to when interest is being imposed.

**Mrs Marland:** I can tell you that sometimes it is more than just waiting until evening hearings can be scheduled, because in my riding there has been a hearing that has been ongoing now for some 18 months. I think a year of that delay was caused by the fact that one of the panel members had girlie posters in his office. The staff at the Ministry of Housing objected, and rightly so, to the fact that he had these girlie calendars or posters on the inside of his office door. It took the ministry a long time to decide whether he was appropriate to sit as a panel member on the rent review board. Anyway, he has subsequently been removed from that panel, but in the meantime the hearing was adjourned while this problem was resolved. It does not matter what the cause is as much as the fact that there was a delay in a hearing. The hearing had started with a panel consisting of three people. It is ironic, because it is a panel I attended for the initial two meetings.

What happens? A year and a half later the hearing is reconvened with a new panel member appointed. This can happen if there is illness. Have you heard of anything like that, where there is illness or a replacement for any reason? It is a loss—if it is a legitimate rent increase that is then granted by the panel, it seems fair that if it goes either way it should be paid. If the tenants have overpaid and there is a measurable sum of money involved, they should get interest. If it is the reverse, with the landlords, obviously it should be the same for them too.

We are having an interesting exchange of players here. I am just watching this magical stage as the puppets move in and out.

1030

**Mr Mammoliti:** It's better than the tag team we see over there.

**Mrs Marland:** Yes, but there are fewer of us. I hope we all have our little sub slips and everything so we all know who is doing what and who is going to be voting. I do not know now who is going to be here voting for the government.

Interjections.

**The Chair:** Let's have a little order.

**Mr Owens:** Let Ms Poole repeat the comments she made this morning about the proposal that the—

**Mr Mammoliti:** Maybe you can learn a lesson from Ms Poole.

**Mrs Marland:** I have finished, Mr Chairman.



**Mr White:** Oh, you have finished, Mrs Marland. Thank you very much. I just want to ask a couple of questions of Mrs Marland with regard to her amendment.

**Mrs Marland:** Through the Chair.

**Mr White:** Through the Chair, of course. First, where were you going to insert the phrase again?

**Mrs Marland:** After "owing," in the next to last line. I think you can see by reading subsection 21(7) where "owing" is.

**Mr White:** So this interest will refer to the time from the point of application, or from the point of decision?

**Mrs Marland:** Whatever is relevant in the rest of that section.

**Mr White:** I am asking you what would be relevant.

**Mrs Marland:** Do you not have a copy of my amendment?

**Mr White:** No, I do not.

**Mrs Marland:** All of you have them.

**Mr White:** It has not been distributed.

**Mrs Marland:** I am sorry; every member of the committee has a copy of my amendment, Mr White.

**The Chair:** It should be in your package, Mr White.

**Mrs Marland:** It has been distributed for about three months now.

**The Chair:** The clerk is busily finding you a copy, Mr White. Ms Poole, just to be helpful here.

**Ms Poole:** This is to be helpful. This is actually a procedural thing. Mrs Marland has said that the purpose of her amendment was to balance it off either way, that if a landlord owed a tenant money or a tenant owed a landlord money, in either scenario it would include interest. However, subsection (7) only refers to the case where a tenant owes money to the landlord. It does not cover the reverse case. I wonder if it would not be more appropriate for this amendment to actually deal with subsection (6), which covers both situations.

**Mrs Marland:** I think that is an excellent suggestion by the member for Eglinton. Have you already voted on subsection (6)?

**The Chair:** Perhaps we could have unanimous consent. Yes, we have voted on it.

**Hon Ms Gigantes:** No.

**Mrs Marland:** Of course not. The minister is here. We will not get unanimous consent on anything now.

**The Chair:** I hear a "no." We are dealing then with the amendment as proposed by Mrs Marland to subsection 21(7).

**Hon Ms Gigantes:** It will complicate things.

**Mrs Marland:** It does not matter because this whole exercise is a total waste of time. We know the government is not going to support any of these amendments. Last week, when I was particularly frustrated, I said: "Why don't we ask the minister to come in and tell us if there are any amendments they are going to support? We'll just move right to those amendments, get them done, and we'll save all the time, money and energy of everybody involved

in these hearings." At that time the committee refused to invite the minister to come and answer that question. Now, when we ask for some consideration about moving an amendment to a more appropriate section, which I agree with, the minister says, "Not agreed." This is what we are dealing with.

**The Chair:** Thank you, Mrs Marland. Actually, Mr White has the floor. He was just checking to get the appropriate section.

**Mr White:** The issue Mrs Marland brings up of an equal playing field and the interest being accrued to both landlords and tenants in an equitable way seems to be quite reasonable. What I am not clear about—and Mrs Marland was not able to answer this question; perhaps Ms Parrish could—is would the interest Mrs Marland suggests should be due here only to the landlord be retroactive to the date of the decision or the date the rent increase would apply back to? For instance, what if there was an application in November 1990 which has been decided now in 1992?

**Ms Parrish:** It would go back to the first effective date. The whole point about this equal instalment thing is that you only get the right to do equal instalments as a tenant if there has been more than a three-month lapse between the first effective date on the order. For example, if the order was given before the first effective date or one month after the first effective date, you would just have to pay it in a lump sum. This is only because you are dealing with an order that will stretch back in time, maybe over several months, and requiring a lump sum payment right up front could be very difficult for tenants. The section clearly says the tenant must be paying back at least three months in arrears, and it could be a much longer period of time.

**Mr White:** According to this motion then, what you would have would be something along the lines of retroactive interest.

**Ms Parrish:** It would be interest on a sum of money where the tenants would have no way of knowing what it was to begin with. They could never at any time have paid it in advance, because they would have no way of knowing what it was. The concern is that it is very difficult for tenants to avoid paying this interest because they do not know what it is.

**Mr White:** That is very helpful.

**Hon Ms Gigantes:** If I could just comment on the same issue, perhaps I could explain to members of the opposition, who seem horrified at the suggestion that I do not want to go backwards through this bill, putting this proposed amendment at a place we have already been, that the point of my suggesting it is better to deal with this amendment as it is placed here is that I feel it is very important to deal with the issue of what is owed by the landlord in one circumstance. I hope I have Mrs Marland's attention, because it is her amendment I am trying to address here, and its placement in particular.

The reason for payment of interest by the landlord is an entirely different one than Mrs Marland is proposing with this amendment. She is proposing an amendment because



a landlord has made an application that would be effective at date X. When that application is approved at date X plus 10 months or 12 months, she is suggesting the landlord have the right to the amount of money, which would be X plus interest from the date for which the landlord had applied.

1040

We are saying that is a very different question—because the tenant does not know whether that application was approved—from the question of when a landlord owes money to a tenant. When a landlord owes money to a tenant, it is money the landlord has had in his or her possession and has had the ability to earn interest on. It is for that reason we are saying the tenant should have the benefit of the interest. Those are two different situations, and when I say I do not want to go backwards, I do not want to confuse those two different situations. In one situation we as a government will be supporting interest, and in the other not, for the reasons I have explained. They are not comparable situations and we do not intend to address them as comparable situations.

I know Ms Poole has been trying to be helpful, but to move the amendment from dealing with it as a specific and separate item as an amendment will not be helpful. It will not help clarify the issues to members of this committee.

**Mrs Marland:** I do not care where it goes, because it is not going to be supported by this government anyway. I cannot underestimate how useless this whole exercise is and what a terrible waste of taxpayers' money it is. It is the worst example of gamesmanship by any minister in my seven years here. Do whatever you want to do with it. It is going to be defeated in any case.

**The Chair:** Shall Mrs Marland's amendment to subsection 21(7) carry? All those in favour? Those opposed?

Motion negatived.

**The Chair:** Shall subsection 21(7) carry? Carried.

**The Chair:** All in favour of section 21 as printed. Those opposed. Section 21 is carried, as printed.

Section 21, as amended, agreed to.

Section 20:

**The Chair:** We will revert to clause 20(1)(d) and clause 20(1)(e). As members will remember, these two clauses were stood down until we completed subsection 21(5). I will give everyone a chance to find the place.

**Hon Ms Gigantes:** Could you tell us where we are again?

**The Chair:** It is clause 20(1)(d) and clause 20(1)(e), and there is a Liberal motion, if I can find it.

**Ms Poole:** Mr Chair, the Liberal Party had tabled an amendment, which was subject to passage of our amendments under section 21, so we will withdraw our motion.

**The Chair:** Thank you, Ms Poole. Questions or comments on clause 20(1)(d) and clause 20(1)(e).

**Mrs Marland:** There would not be anything to comment on because it is now withdrawn. Is that correct?

**The Chair:** Ms Poole's amendment is withdrawn, but the section itself is what we are speaking to now.

**Ms Poole:** One clarification: Only clauses 20(1)(d) and 20(1)(e) were stood down, were they not? The others we debated and carried.

**The Chair:** Yes. Shall clause 20(1)(d) and clause 20(1)(e) carry? All in favour? Opposed? They are carried. Shall subsection 20(1) carry? Carried.

I am told we still have subsection 20(8) stood down.

Strangely enough, we are moving to section 22, which is the next section.

**Mrs Marland:** I want to confirm that there were two sections set down, subsection 20(8) and I think subsection 22(3). They were set down last week because they were our amendments and the government wanted to look at them.

**The Chair:** I am told they are still under consideration and we will deal with them at the appropriate time when the consideration has taken place.

**Mrs Marland:** That is fine.

Section 22:

**The Chair:** We are going to subsection 22(1), which the government has an amendment to.

**Hon Ms Gigantes:** We do?

**The Chair:** As printed. Following our procedure, it is not necessary to read it in when we have an amendment as printed, but an explanation would be helpful.

**Hon Ms Gigantes:** As printed, the government amendment shapes subsection 22(1) to provide for the maximum rent for a rental unit to be increased above the guideline if it is authorized by a notice of carry-forward.

**Ms Poole:** Notwithstanding that this is a technical amendment to make section 22 consistent with changes the government just passed in subsection 21(5), because the Liberal caucus believes the carry-forward proposed by the government in subsection 21(5) is inadequate, to be consistent we will therefore be voting against subsections 22(1) and 22(2) and the amendment proposed by the government.

**The Chair:** Any further questions or comments? Shall subsections 22(1) and 22(2), as printed, carry? All in favour? Those opposed? Subsections 22(1) and 22(2) are carried.

Do we have unanimous agreement to stand down subsection 22(3)?

**Ms Poole:** I do not have any problem with standing down a section; I just wonder if we could briefly review the reason for standing it down.

**Hon Ms Gigantes:** That was as a result of a motion of amendment by Mrs Marland, if I recollect correctly, to subsection 20(8). That motion is under consideration and we would therefore propose to hold this section until that is clarified.

**Ms Poole:** It seems perfectly reasonable. We will agree to stand that section down.

1050

**The Chair:** We then have unanimous agreement. We will stand down subsection 22(3).

Agreed to.

**The Chair:** Subsection 22(3.1).



**Hon Ms Gigantes:** This is part of the amendment in the reprinted bill that has been put forward by the government. It refers to the capital amount identified for the carry-forward allowance. I am going to have to read it carefully.

I am being advised by staff that subsection 22(3.1) could also be affected by Mrs Marland's proposed amendment referred to earlier to subsection 20(8), I believe it is, and subsection 22(3). Therefore, it is probably in our best interests in terms of order to also stand this one aside.

**The Chair:** Do I have unanimous agreement to stand down subsection 22(3.1)?

Agreed to.

**Hon Ms Gigantes:** Mr Chair, it looks as if we are dealing with large portions of section 22 following the subsection we have just passed which might also be affected by Mrs Marland's motion. Would it be wise to set the whole thing aside?

**The Chair:** Could we have a moment while we talk about what sections may have to be set aside, and we can do that all at once.

**Hon Ms Gigantes:** Mr Chair, I apologize for the delay. I am being advised that it would be wise for us to set aside subsection 22(4) and subsection 22(5) also as a result of their linkage with Mrs Marland's proposed amendment.

**The Chair:** Do I have unanimous agreement to stand down subsection 22(4) and subsection 22(5)?

Agreed to.

**The Chair:** Then we are on to subsection 22(6), which is a section in the bill as reprinted.

**Hon Ms Gigantes:** That is correct. Subsection 22(6) sets the cap on the maximum rent at 3%. While there might be disagreement on this, I believe we have had quite extensive debate on previous issues directly related to that amount.

**The Chair:** I see that the Conservative caucus has an amendment to this section.

**Mrs Marland:** I move that subsection 22(6) of the bill, as reprinted to show the amendments proposed by the minister, be amended by striking out "3" in the fifth line and substituting "5."

Mrs Marland, this amendment is substantially the same as a previous amendment that was not carried by the committee on subsection 21(2), which I believe was debated extensively.

**Mrs Marland:** So you did not want to hear it again?

**The Chair:** It is a practice in committee that if the question has been decided, we do not redebate the same question.

**Mrs Marland:** There are some members who did not hear that debate.

**The Chair:** I am going to rule the amendment out of order on the basis that the question has been decided in a previous section.

**Mrs Marland:** All right. I accept that ruling, Mr Chairman.

**The Chair:** We will now debate subsection 22(6) as printed.

**Hon Ms Gigantes:** I think we have debated the issues involved, as I indicated.

**The Chair:** Questions or comments on subsection 22(6)? Shall subsection 22(6) carry? Carried.

Subsection 22(7), questions, comments, explanations or amendments?

**Hon Ms Gigantes:** This is part of the amendment that had been submitted by the government in this section. It provides the mechanism by which the rent officer informs the parties of the carry-forward and the dates that would apply.

**The Chair:** Further questions or comments? Shall subsection 22(7) carry? Carried.

Subsection 22(7.1), questions, comments, explanations or amendments?

**Hon Ms Gigantes:** It is part of the amendment put forward by the government to this section. Again, it provides the information on which the question of costs no longer borne will be determined.

**The Chair:** Further questions or comments? Shall subsection 22(7.1) carry? Carried.

Subsection 22(8), comments, questions, explanations or amendments?

**Ms Poole:** I wonder if I might have a second to complete reading the section.

1100

**The Chair:** Shall subsection 22(8) carry? Carried.

Subsection 22(9), questions, comments, explanations or amendments? Shall subsection 22(9) carry? Carried.

Subsection 22(10) is as printed, I believe. Questions, comments, explanations or amendments?

**Hon Ms Gigantes:** This sets out the intent of the legislation that if a carry-forward order has been made, the carry forward will mean that the landlord will not make an application during the period of the carry-forward.

**Ms Poole:** Just a point of clarification on this issue from the minister: If a landlord has a carry-forward into a second year for capital repairs and the landlord continues to do capital repairs above guideline in the second year, but they do not meet the full amount of the cap, would the landlord be able to amalgamate the repairs done the previous year for which he was granted carry-forward with the application?

**Hon Ms Gigantes:** I am going to ask Colleen Parrish to comment on this because I think Colleen has a better understanding of this item than I do.

**Ms Parrish:** In the scenario you have given, the landlord has not used up his 3% cap in the second year and the landlord does new capital repairs. The landlord cannot ask for the carry-forward. What he can do is simply make a new application, take the amount he has justified from the previous year and justify the new capital expenditure. However, if he asks for the carry-forward, he cannot make that application, so he has to decide if he wants the carry-forward or if he wants to make a new application.



**Ms Poole:** Just a further question along that time: Can the landlord make that decision in the second year or does he have to make that decision in the initial year when he is applying for carry-forward and does not necessarily know whether there will be capital repairs the following year.

**Ms Parrish:** You have to apply for the carry-forward in the second year. It is not automatic.

**Ms Poole:** So it is at the time of application in the second year, at which stage the landlord should know whether there will be capital work done in that particular year.

**Ms Parrish:** Landlords always have to indicate whether they intend to carry forward. They may have other reasons. They may decide they are not going to carry forward because they cannot get their rent increase anyway for market reasons, but they must always indicate whether they intend to carry forward. It is not automatic. It is their obligation to ask for carry-forward.

**Ms Poole:** Just to make sure I am perfectly clear on this, if the landlord did not make an application for carry-forward in that second year, then the portion that he or she was entitled to carry forward could be put in as part of the new application together with the new capital repairs.

**Ms Parrish:** Subject to the overall cap, yes.

**Ms Poole:** Subject to the overall cap. We will support this amendment.

**The Chair:** Further questions or comments on subsection 22(10)? Shall subsection 22(10) carry? Carried.

On subsection 22(11). Questions, comments, explanations or amendments?

**Ms Poole:** Could we perhaps have a brief explanation of the effect of this section?

**Hon Ms Gigantes:** I am going to ask Colleen Parrish to do that. The key to understanding what is happening in this subsection has to do with the bottom line. Colleen, you are going to tell me I am right. The first effective date set out in the notice of intent?

**Ms Poole:** That was an order, Colleen. You are going to tell the minister she was right.

**Hon Ms Gigantes:** It had a question mark at the end.

**Ms Parrish:** This is to deal with the situation where the landlords have not realized and have asked for the carry-forward, and that means they are not allowed to apply and they apply anyway. This says: "If you have done that, your application is deemed to be withdrawn. If you have taken your notice of carry-forward, you cannot make another application, and if you do, it will be deemed to be withdrawn."

**Hon Ms Gigantes:** This is sort of a double stop.

**Ms Parrish:** Yes. It is in case you do it by mistake, essentially. It is just a mechanism for getting rid of the application. Otherwise it sort of lies around and there is no way of getting rid of it.

**Ms Poole:** So this is just to reinforce subsection (10).

**Ms Parrish:** Yes.

**Ms Poole:** And to deal with the application.

**Ms Parrish:** We do not want to be forced into a hearing to decide whether or not the application is withdrawn. It is just an administrative mechanism where people have made errors and applied when they should not have.

**The Chair:** Further questions or comments to subsection 22(11)? Shall subsection 22(11) carry? Carried.

**The Chair:** We now have a Liberal amendment to add section 22.1 that Ms Poole will move shortly.

Ms Poole moves that the bill be amended by adding the following section:

"22.1(1) A landlord may apply to a chief rent officer for an order apportioning the total rent charged in respect of a residential complex among the rental units in it in order to vary the rents to achieve equalization of rents charged for similar rental units within the residential complex.

"(2) An application under subsection (1) shall be made at least 90 days before the effective date of the first intended variation in rent set out in the application.

"(3) If a rent officer is satisfied in an application made under this section that the rents ought to be equalized, he or she shall set the rent that may be charged for any rental unit so that the landlord may achieve equalization of the rents charged for similar rental units within the residential complex, but the amount of rent increase that is attributable to the equalization in respect of any rental unit shall not exceed 5% of the maximum rent that was chargeable for that rental unit in the 12-month period immediately preceding the date or dates of the rent increase.

"(4) In setting the rents to achieve equalization, the rent officer may set a rent that may be charged for a rental unit at an amount that is less than the rent currently being charged for that rental unit.

"(5) If the rent officer has determined and apportioned the rent charged amongst the rental units in the residential complex, the minister shall order the percentage, if any, by which the rent charged for a rental unit may be varied from the amount that would otherwise be the maximum rent for the rental unit and the date or dates on which that variation may take effect."

**Ms Poole:** This is a fairly long, convoluted section to basically bring equalization back into Bill 121. Equalization was a mechanism that was in the Residential Rent Regulation Act, which enabled a landlord, or a tenant for that matter, to apply for a rent order that would bring the rent in line with other units in the building.

I would like to make a couple of things very clear. This makes no change in net revenue to the landlord. It is simply a matter of changing it within the building so that one tenant pays less than he did before, and one tenant pays more. The bottom line is that when the equalization has been fully effected, they will pay the same amount.

There are historical reasons why units in one apartment building may have rents varying by large amounts. Part of it lies in the fact that until the RRRA, it was not in force that there could only be one rent increase per year, so the landlord tended, every time a tenant left a unit and a new tenant came in, to put in a rent increase and he did not have to justify it before a rent board. On the other hand, for

a tenant who was long-standing, say, some of the senior citizens who had been there for 20 years and did not move, the landlord by and large did not tend to put up the rent.

At the end of the day there tended to be a very diverse mix of rents in a building, which makes it hard administratively and also makes it very difficult for tenants who know that they are paying maybe \$200 more for a unit than somebody down the hall with an identical unit.

1110

I think equalization is something that many tenants would like to see and that many landlords would like to see. As I said, it makes no difference in the net income to the landlord. One thing you might like to keep in mind is that this is to be phased in so that there are no sudden jumps in income. Should the government members say such things as, "Yes, but one tenant might not be able to afford to pay the higher rent," I will say to you there are sometimes people in those units who are paying more who cannot afford to pay more, so it is give and take.

If the government is concerned about the fact that we have mirrored the RRRA and have a 5% equalization phase-in per year until such time as the rents are equal, I would certainly be more than willing to accept a friendly amendment by the government to change it to 3% to adhere to the cap it has set in the rest of the legislation. I am certainly not averse to that, because I think equalization is a good thing and a fair thing. If it means I would have to amend my own motion in that regard, I would be willing to do it rather than see the amendment fail. That is my last offer.

**Hon Ms Gigantes:** Very briefly, we will not be supporting this amendment. As Ms Poole has indicated in her laying out of the amendment, it is a very complex issue. It certainly involves a number of questions around even the tenant's right or capacity to stay in an apartment and a question of whether through such a mechanism some tenants might end up getting evicted.

The difference in rent levels in any given apartment building, rent levels among comparable rental units, is something that has been created by a number of circumstances. Ms Poole has described them as historic. I think a large number of them are a result of illegalities. Some of them may have had to do with different lengths of tenancy agreements in the early days when rent regulation was coming into effect, and in some cases I think landlords chose to leave rents at a low level for certain tenants.

We have a variety of levels of rents; that is a fact. I certainly have not had any approaches by any tenants who were paying the lower rents suggesting there should be equalization. I do not think Ms Poole would ever suggest that was the case.

**Ms Poole:** On a point of order, Mr Chair: Does that surprise the minister?

**The Chair:** That is not a point of order, Ms Poole.

**Ms Poole:** But it is a valid question.

**Hon Ms Gigantes:** I was just drawing it to the attention of members of the committee. We will not be supporting this amendment.

**Ms Poole:** That too does not surprise me, Mr Chair.

**The Chair:** Further questions or comments regarding Ms Poole's amendment to section 22.1?

**Ms Poole:** Recorded vote, Mr Chair.

The committee divided on Ms Poole's motion, which was negatived on the following vote:

**Ayes—3**

Daigeler, Morin, Poole.

**Nays—5**

Abel, Gigantes, Harrington, Owens, White.

**The Chair:** Ms Poole's amendment is lost. We will change chairs here.

**The Acting Chair (Mr Morin):** I believe you have some motions.

**Mr Brown:** They are to add sections 22.2, 22.3 and 22.4.

**The Acting Chair (Mr Morin):** Mr Brown moves that the bill be amended by adding the following sections:

"22.2(1) A landlord may apply to a chief rent officer for an order increasing the maximum rent for any or all of the rental units in a residential complex by more than the guideline because of an expenditure made to promote energy efficiency and conservation.

"(2) Subsections 13(4), (5) and (6) apply with necessary modifications to an application under this section.

"(3) A landlord may make applications both under this section and under section 13 and if the landlord does so, the hearings officer shall consider them together.

"22.3(1) A rent officer shall not consider an application under this section unless,

"(a) it includes a written approval from the Minister of Energy of the expenditure as an energy efficiency or energy conservation measure; and

"(b) that approval includes a statement of the amount that will be allowed for the expenditure and an amortization schedule setting out the period for recovering that amount.

"(2) The Minister of Energy shall consider any written request containing the prescribed information from a landlord for the approval of an expenditure under subsection (1) and shall give the landlord that approval if after considering the possible benefit of the measure and its cost, the minister believes that the expenditure is reasonable.

"(3) The Minister of Energy shall not approve an expenditure for which the landlord has received or will receive a grant.

"22.4(1) Before making an order on an application under section 22.4, the rent officer shall make findings in accordance with the prescribed rules and for the prescribed periods,

"(a) to determine what guideline is to be applied to the rental unit;

"(b) to determine whether an increase of the maximum rent is justified and in what amount as a result of the approval from the Minister of Energy;

"(c) to determine the amount that applies to each rental unit respecting savings in operating costs resulting from the expenditure.



"(2) Subsections 20(2) and (3) apply with necessary modifications to findings under this section.

"(3) On an application under section 22.2, a rent officer shall order the amount of the maximum rent for each rental unit in the residential complex and the date on which that maximum rent takes effect.

"(4) If the rent officer's findings justify an increase in rent for a rental unit in respect of an expenditure referred to in section 22.2,

"(a) the rent officer shall provide in the order that the maximum rent shall decrease by the amount of that increase at the end of the amortization period and shall specify the amount and time of the decrease; and

"(b) the rent officer shall also provide in the order that the maximum rent at the end of the amortization period shall be reduced by the amount determined to apply to the rental unit respecting savings in operating costs resulting from the expenditure.

"(5) The rent officer may order a maximum rent in an amount that increases the previous maximum rent by more than the sum of the guideline and 3%.

"(6) Subsections 21(6) and (7) apply with necessary modifications to an order under this section.

"(7) No order shall be made under section 28 (reduction of rent) because of savings in operating costs resulting from an expenditure that is the subject of an order under this section."

1120

**Mr Brown:** I would like to give a brief explanation of a very long amendment. The amendment is intended to take into account Ontario's policy of energy efficiency and conservation and allow it to be useful to the people in Ontario who live in rental accommodation.

We know that under Ontario Hydro's new 25-year plan, Hydro is projecting the most ambitious program of energy conservation and efficiency in the western world. Indeed, it is more than twice what Hydro thought was possible just two years ago. We know of no other utility in the world that believes these kinds of figures can be met. As legislators, we are all very hopeful that Hydro will meet these targets, but in order to do that, it has a very ambitious plan to move into rental accommodation and save energy within that particular sector.

The purpose of the amendment is to provide a mechanism whereby the landlord has an incentive to do what all Ontarians want to do; that is, conserve energy. The way the bill is presently drafted, if we see energy increases, particularly for electricity, in double-digit order over the next three or four years, the landlord has no incentive to do anything but pass those along.

As the minister will tell you, the average that determines the cost of the guideline increase includes energy costs; therefore, it will continue to escalate. It really does not make a great deal of difference to a landlord whether he is in the efficiency business or not. His rents will be increasing as the average of energy costs increase; therefore, he will be passing those directly through to the tenants.

What this amendment attempts to do is to say to the landlord and the tenant, "If you wish to participate in en-

ergy conservation and efficiency, it will be in your interests." It is, at least in my view, a significant government policy agreed to by all three political parties that we should promote energy conservation and efficiency as much as possible. There should be no disincentive to a landlord or a tenant to participate in what I believe is just plain, commonsense public policy.

I am not going to go through these sections. I will tell the minister I would not be unhappy if the government did not accept this amendment, but during the clause-by-clause would bring in one of its own which it may find to be more suitable.

What I am arguing strongly for here is the principle that energy conservation and efficiency should apply to all segments of our society, to tenants, landlords, commercial, industrial and freehold housing in this province. In my view, the way the present bill is drafted, there is no incentive, except in a very few cases, for landlords and tenants to be able to take advantage of energy conservation. That is the intent of this amendment. If members cannot support it, I hope they will talk to the ministry and see that during the clause by clause, a government amendment is placed that will accomplish the same goals.

Those are my comments, which I think were briefer than the reading of the amendment.

**Hon Ms Gigantes:** The government appreciates the general direction of the amendment that has been proposed by our Chair, acting as a member of the committee for the moment.

I too am gripped by the excitement of what we can do with energy conservation in this province. Without accepting the member's predictions of double-digit increases by Ontario Hydro over the next several years, I will point out to him that the guideline on which this bill really hangs its hat, as it were, is one that reflects a rolling average over a three-year period. So particularly in a case where, as he speculates—and I think him to be engaged in an accurate speculation—we are going to be dealing with double-digit hydro increases over the next few years, we would obviously see an increase in energy costs to landlords which would be increasing at a rate faster than that rolling average would provide through the guideline. Correct?

**Mr Brown:** I suggest to the minister that—

**Hon Ms Gigantes:** That provides in and of itself some incentive to landlords.

Now the counterbalance to that is the suggestion that the provision within this bill—I have to remind committee members that there is provision in this bill for landlords to make above-guideline applications for energy-efficiency retrofits and renovations, and there is a fair amount of capital room there for landlords who wish to do this. It also provides that where there are extraordinary savings—I think they have to be extraordinary savings, am I correct?—available this way, there could be an application by tenants for some remission of rent. He wishes to remove that by his amendment.

I am going to remind him of something he knows, because he has been interested in this question of energy efficiency, and that is that we can put in all the physical



changes we want in a building, and if the people who live in that building do not have an incentive to make those measures work, the whole thing is undercut. In other words, it makes sense to provide both the landlords and the tenants with the possibility of some incentive. I think it is going to be a rare kind of case where we are going to see huge amounts on either side of this equation in terms of changes in rent levels or, for example, a large gap between costs of energy to a landlord and the amount the landlord can save. But he will acknowledge, I am sure, that it is important for everyone who lives in a building that has been modified to make sure he takes advantage of those modifications in order to make sure those energy-efficiency potentials can be realized, or they just will not happen. We all know that.

We believe that we have provided good room for landlords to move in the area of energy efficiency by providing that they can recoup above-guideline increases through rent increases for energy-efficiency measures. We think it important there be some potential there for tenants to feel that when big savings can be made on energy costs, then they can share a bit of those savings. We have made a modest provision for that. We hope very much that what we have provided through this bill, along with other government measures that will be developed, will indeed see energy conservation built into the physical structure of more and more of our buildings, and that the people who live in those buildings and the people who work in the buildings we work in will use every kind of good habit we can develop so that we are saving energy.

**Mr Brown:** The minister and I disagree on at least some of the premises of what we are dealing with. We know on the rolling average, for example, that this year the increase in Ontario for electricity, at least at the wholesale level—and so by community it could be much more or it could be less—is 11 point something or other, which for last year would be an increase above the rate of inflation of at least 6%. We know that the year before, the increase was about 15% because the GST was rolled in.

We know that next year your own Minister of Energy has predicted that the numbers will be double figures, or at least very close to them, which in that year, if present projections for inflation carry on, would be 7% or 8% above the normal inflationary average. That means the landlord will be the beneficiary of a much higher guideline increase than he might otherwise be entitled to.

If the incentive for a landlord to do capital expenditure to save electricity under those circumstances is not very great because of the provision within the bill that provides that if there is a decrease in the cost of utilities—I believe it is 10% in the bill, but I am not sure.

**Hon Ms Gigantes:** It is 50% of the guideline amount. That is why it is called an extraordinary decrease. It is going to have to be a pretty revolutionary retrofit for tenants to be able to benefit from this clause. It can happen, but it is not going to be the ordinary kind of methodical retrofits that landlords will undertake.

1130

**Mr Brown:** I am looking for what incentive there is to the landlord to undertake the energy conservation measure in that case or in the second case, where we have a large number of units within this province where the tenant actually pays for his or her own utility, not the landlord. I am quite puzzled why a landlord would make any energy conservation measures within the building when he can in no way whatsoever recoup his investment by way of saving energy. The tenants, on the other hand, would like to have energy conservation measures taken into account in their units so that they could save some money on electricity. I am wondering how the minister would explain that situation in terms of their legislation, without an amendment.

**Hon Ms Gigantes:** Mr Chair, the simple point I tried to make is that in a period which, again—

Interjection.

**The Acting Chair (Mr Morin):** The Chair is here.

**Hon Ms Gigantes:** Yes. The member for Algoma-Manitoulin is proposing this. In a period when the cost of energy, say electricity, is rising at what he considers to be a very steep rate, there is going to be a widening gap between the absolute charge to a landlord for that energy and the amount the landlord will get through the guideline, because the guideline reflects a rolling average of the previous three years. That gap is an incentive. He is suggesting it is not enough of an incentive. I think it is providing an incentive for a landlord who is interested. Further, I do not think this is the only kind of incentive we are going to see over the next few years as far as landlords are concerned.

I do not want to build this kind of proposal into the rent control situation. Without detracting at all from the intent here or the elegance of the wording, it is an enormously complex system that is being set up to achieve a relatively simple objective, which is to encourage landlords to make renovations for energy efficiency. I think we have to provide a balance that is going to say they do not take all the benefits, that tenants can take some benefits out of this. I think that is important, because those tenants live there. If they do not cooperate with the mechanisms, then it ain't gonna work. They need to feel some self-interest in this too, as well as landlords.

I believe the legislation as we now have it set out provides the ability for landlords to make the changes. I also think that in coordination with other measures that this government hopes to develop to provide incentives for energy-efficiency renovations, we will see the work getting done.

**Mr Brown:** I do not accept a couple of the minister's premises, but I wish she would answer the one specific question where I pointed out that in numerous cases the tenants pay for their own utilities. In that particular case, what incentive is there for a landlord to do things to save the tenant energy? It seems totally backwards to me. Could you explain to me how that might work? I would also point out that the amendment provides for the costs-no-longer-borne provisions to take effect, so down the road the tenant and the landlord are both big beneficiaries of this initiative. The tenant's rent will go down.

**Hon Ms Gigantes:** That is true.



**Mr Brown:** If the building's energy costs go down, the tenant benefits. I see this as a pro-tenant amendment more than a pro-landlord one. I do not see any real advantage to the landlord at all within the present system to do what public policy should dictate. All I am trying to do with this amendment is to have public policy and the rent control bill line up. In my opening comments, I said that I would be perfectly happy if you said: "I have some problems with a few sections of this. It is unduly complicated. We can think of a better way to do it." You can come forward with that later on. I can understand that. But I think the principle is extraordinarily important.

**Hon Ms Gigantes:** The principle is very important. We do believe there is room in this legislation that provides both an incentive and a mechanism for landlords to undertake work. We do not feel it is useful to try to institute the whole of an incentive system for energy conservation in rental accommodation through the rent control legislation. We have provided a base in this bill that we believe will be a good base to combine with other programs this government will be bringing forward. For some of the reasons of the difficulty of application and appropriateness that I have mentioned before, we feel we would prefer to stick with the provisions as we have set them out in the legislation, rather than get into the proposals the member has provided us.

I think it is fair to say that the member has identified an area that really does concern this government. Certainly, were I to be Minister of Housing three years down the road, for example—one does not predict anything—this is something I think should be reviewed. I think we have to monitor this carefully, and I consider it a responsibility of the Ministry of Housing and the Minister of Housing to monitor what happens. I believe we have made provisions which along with provisions that will not increase the burden to tenants unnecessarily—which I believe this amendment would do—combine with other programs that will be providing incentives in the area of energy efficiency in large residential buildings. That is something I personally will take an interest in watching. It is an area that very much interests me.

I appreciate the amendment the member has brought forward. Maybe two or three years from now we will say we are going to have to move to something that is a bit tougher, that we are going to have to make tenants pay more and faster, because essentially that is what his amendment would do. But I do not see that necessity now, and I think that to treat energy-efficiency renovations as we have in this bill will provide a good path for progress.

1140

**Mr Brown:** First, Minister, I appreciate those comments. Second, I would like to say that the idea is not for the tenants to pay more. It may be to pay faster, but we are living in difficult times and all of us, Ontarians everywhere, are having to debate these very same issues. Many of us, including myself, have taken some rather extraordinary energy conservation measures within the last year.

I really do not understand why tenants are any different than anyone else in so far as participating in public policy

is concerned. I do not see this as costing tenants more; I see this as costing tenants less. I see this as an opportunity for the tenants to participate in what I think is a very important issue and that this shall not cost them more. At the very same time, they may be paying a little bit more for capital, but they should be paying a little bit less for energy. I ask the minister if she could come back and directly respond to the case where the tenant rather than the landlord pays the utility bill.

**Hon Ms Gigantes:** It is all very well for Mr Brown to suggest that tenants should participate in energy conservation as well as everybody else. But what he is also suggesting is that we are going to change this proposed legislation in such a way as to say that landlords can go ahead with above-guideline increases greater than the cap in order to put in renovations that increase energy efficiency and that tenants will have to pay for it.

Let's be clear about what this amendment does. I want to remind him that 30% of tenants in Ontario pay more than 30% of their income already to have a roof over their heads. For those tenants, that kind of choice, a 1% difference in a rental cost, makes a lot of difference. You and I, Mr Brown, can sit and discuss all the lovely things we do in our homes. We have the luxury to do that. But there are lots of people who are firmly convinced about the efficacy of energy conservation who do not have the dough to pay for it today, right?

**Mr Brown:** Agreed.

**Hon Ms Gigantes:** This is a wide-open kind of amendment. We have provided a cap and we think it is a reasonable cap. We think we have provided incentive through the guideline for landlords in an era of increasing energy cost. I am not willing to move off that as our framework at this stage.

When Mr Brown speaks about the case of the tenant who pays the energy bills, there are measures involved here that we will come to, which I am a little dubious about but willing to try, that would allow a tenant and a landlord to come to some agreement, for example, about a single rental unit. We will also be providing incentives for landlords through other programs, beyond the price incentive they will have when they compare their costs of operation in year X with the roll-through guideline, which may not provide full coverage of the energy cost increase in a year or in a time of increasing rates of energy cost. I think I have attempted, though Mr Brown may not be totally satisfied, to directly address the questions he raised.

**Mr Brown:** I would ask the minister what sections of the bill provide for this relief for tenants who pay their own utility bills. I would find it helpful if to know what sections do that.

**Hon Ms Gigantes:** There is no relief but there is a possibility that a tenant and a landlord could come to some agreement about a single rental unit in terms of renovation above guideline. The possibility exists that this could include energy-efficiency measures; for example, windows. That will be up to the landlord and the tenant.

**Mr Brown:** If I understand you, that only applies to single units.



**Hon Ms Gigantes:** That is correct.

**Mr Brown:** Just for some information, perhaps the minister could tell us how many units in this province might be in the category of paying their own utilities. Do you have a number?

**Hon Ms Gigantes:** No, we do not have accurate statistics on that.

**Ms Poole:** First of all, I want to commend the member for Algoma-Manitoulin for bringing this motion forward. He has been extremely active in the area of energy efficiency and conservation for a number of years and is quite keen to see that various government ministries adhere to a policy that is going to increase energy conservation.

I mention different ministries for a particular reason. If one ministry, for instance the Ministry of Energy, sets extremely high conservation targets, which the Ministry of Energy has done for Ontario, it makes a lot of sense to me if every other ministry tries to assist in meeting those targets. Because the NDP government has discounted expansion of nuclear power to provide more energy in the future, it has virtually doubled the conservation targets. We are not going to get into a debate here today as to whether that is achievable, although I have my own doubts, but they have set these targets. I think it is incumbent upon the Ministry of Housing and every person in this province to try to assist.

The minister has said that two or three years from now, they may find they have to do something tougher. If we are going to meet those extraordinarily high targets, we cannot afford to wait for two or three years.

Conversion can be extremely cost-effective, not only by changing to triple-glazed windows and efficient measures in that regard, but also by such things as conversion from oil to gas. I know in our own home we converted from oil to gas and there were extraordinary savings. We halved our bills. So when the minister says it would be highly unlikely for tenants to have the ability to go for an extraordinary operating decrease because of energy conservation and conversion, I do not think that is entirely accurate. I think there are going to be many opportunities. Members would be absolutely astonished to see how much can be saved by bringing in these measures.

The minister has specifically referred to the fact that the Liberal government—sorry, I got ahead of myself by about three years there—the Liberal caucus has put in a section that removes protection for tenants in that they could not apply for an extraordinary decrease until such time as the energy-saving measures had been paid for. I would point out to the minister clauses 22.4(4)(a) and (b) of the Liberal amendment, particularly clause (b). Clause (a) refers to a cost no longer borne. Since the government has now seen the wisdom of incorporating that into its legislation, that makes clause (a) somewhat redundant. However, clause (b) says:

“The rent officer shall also provide in the order that the maximum rent at the end of the amortization period shall be reduced by the amount determined to apply to the rental unit respecting savings in operating costs resulting from the expenditure.”

When those operating costs go down, then automatically this order will apply not only to the capital in the cost-no-longer-borne scenario but also to the operating expenditures.

1150

The minister asked what incentive there is for tenants. There are two points I would like to make in this regard. The first is that I think there is an incentive for tenants, the same as for anybody else in Ontario, to try to contribute to the energy problem. Clause (b) means that those tenants will receive relief at the end of the day and their cost will be significantly reduced. It is particularly apropos for tenants who are paying their own energy cost and their own utilities right now, and this is becoming an increasing phenomenon. As the ministry talked about last week, landlords are converting more and more from having cable paid for in the building en masse to having it billed directly to tenants on an individual basis. This is happening more and more with utilities, and I would suspect we will find it will increase dramatically over the next few years, because of the way this legislation is set up.

When we are talking about energy conservation we are also talking about something else we have not mentioned, because I guess it is a side issue: We are talking about comfort. A lot of tenants, I think, would like their windows replaced and various energy-saving mechanisms put in their building, not only because it is a good thing to do, as we all want to do as Ontarians, but also because it dramatically increases the comfort.

The minister has said there is already a section in here subject to a cap and that this in itself should be enough of an incentive for the landlord. But I say to the members of the government that I think this is such an important area that we have to provide a real incentive. We have to provide an incentive where landlords and tenants both have something to gain at the end of the day. That is why subsections 22.4(4) and (5) were specifically put in by Mr Brown, so that we could ensure that tenants did have something at the end of the day.

I concur with my colleague from Algoma-Manitoulin. If the government will bring in some other section if they do not like our amendment, the Liberal caucus has always been known to be very flexible. I do not want to hear any calls from my colleagues over there or it might make me very garrulous on this particular issue.

**Mr Brown:** Or your colleagues beside you.

**Ms Poole:** Or my colleagues beside me.

We are certainly willing to support a government amendment that you feel would achieve the objectives of energy conservation.

There is one last point I would like to make. It refers to the fact that some witnesses and some members of the government have expressed concern about, what is energy conservation, and could everything in a building be deemed to be energy conservation, depending on your particular interpretation? That is specifically why the member for Algoma-Manitoulin has put this under the auspices of the Ministry of Energy, because if we cannot count on the Ministry of Energy of our government to know what energy



conservation is and to be able to determine the criteria, then I think we are in a fairly sad shape. That has eliminated one concern, that anything might be deemed to be energy conservation, and it would be very difficult to make those definitions.

I think the amendment put forward by Mr Brown is extremely good. I commend him for it, and I know there will be many people across Ontario watching this government to see if its actions match its words in regard to energy conservation.

**Mr Brown:** I want to come back to a point on section 22.4 that Ms Poole raised, and that the minister also raised, when she was discussing the matter of no decrease to the tenant until after the cost of the renovation was paid for. The reason for that is that energy efficiency and conservation, at least in my humble view, are two different things. Efficiency will happen in the marketplace. If it is better to do it, you will do it. In other words, if there is a market for saying, "This is a cheaper way to proceed; this makes sense," you will do it. That is the efficiency component. A landlord would use that money to apply to the cost of the renovation. That is why initially the tenant does not get that back, because that is going to pay part of the bill. The way this amendment is drafted, I was hoping that was understood. The reason the tenant does not get the money back initially is that this money is part of paying for the efficiency component of the renovation.

Conservation is a slightly different concept. Conservation says: "We're not necessarily just worried about market forces. We have a public goal." The society has decided for a number of reasons, which are not market reasons, that we want to reduce our use of energy or water or whatever in the conservation field. That means we are willing to pay a little bit of a premium for that. I think that is appropriate. That is why the two are separated here.

What I am trying to say is that we have to pay a little bit for the conservation. The efficiency is going to be paid out of the tenant initially not getting a rebate. But once it is over, the capital is paid off and the bill to the tenant for the utilities goes down. The tenant wins both ways once it is over.

The minister says 30% of tenants right now cannot afford the accommodation they are in. I agree with that. I think that is one of the problems the committee has been struggling with. The flip side of that is that 70% of them can. Perhaps the Minister of Energy in this particular situation could have a look at subsidization for those tenants. The Ministry of Energy and Ontario Hydro are doing some rather unique and innovative things in energy conservation at the moment, some of which I think are very good and some of which I am not too sure about. None the less, they are doing innovative things and they are looking for innovative ways to do things.

For the life of me, I cannot understand what is wrong with this principle. I really cannot understand who loses. If there are people who lose under this amendment, why can we not find a way to fix it for them? If the minister, as she has indicated, cannot support this particular amendment for some technical reasons, I can understand that and I look forward to voting for her amendment at a future date that deals with the same topic.

I do not think three years is good enough. If we wait for three years, we have missed a gigantic opportunity to encourage energy conservation and efficiency within this province. I support the goals of the government. I was on the select committee on energy for two or three years, whatever its term was. Not just New Democrats, not just Liberals, not just Conservatives, but all parties agreed with improving these targets. I think it behooves us all to try to reach those targets and to have legislation that is proactive and encourages all ministries of the government to participate in energy conservation and efficiency incentives.

**The Acting Chair (Mr Morin):** Minister, it is past 12 o'clock. Do you wish to reply now or wait until after lunch?

**Hon Ms Gigantes:** I believe the remarks I feel obliged to make would take me longer than we have at our disposal right now.

**The Acting Chair (Mr Morin):** This meeting is adjourned until 2 o'clock.

The committee recessed at 1158.

## AFTERNOON SITTING

The committee resumed at 1406.

**The Acting Chair (Mr Morin):** Are we all set? I believe, Minister, you had the floor.

**Hon Ms Gigantes:** I will be brief. I would like to assure Mr Brown in particular, who has put a lot of energy and effort into this amendment, that the government has taken very seriously the question of energy improvements in rental accommodation in this legislation. In fact, following many suggestions that arose on this topic prior to our submitting the amendments we have brought forward, there were very comprehensive discussions with the Ministry of Energy about changes we could have in this bill and changes we could have in programs that would support energy improvements in rental accommodation in Ontario.

For a combination of reasons, some of which probably are not worth getting into, we decided it was best to treat energy conservation renovations, which we obviously consider important enough to single out as a topic for landlord applications for above-guideline capital improvements, as other capital improvements which could be the cause of a justified above-guideline increase.

The question has arisen during this particular discussion about the situation where landlords are trying to get out of paying utility costs, because utility costs are rising. Certainly from the energy efficiency point of view, and I am sure Mr Brown will acknowledge this, it is very important to have the person who uses the energy pay the bill. That is the most direct method of making sure that the message about the financial benefits of energy conservation gets through. We have done all kinds of studies, which he is very familiar with, all over, not just here in Ontario, that indicate if you can connect the user to the bill you get very much better conservation effects.

We would have absolutely no objection to seeing landlords do what they can. Obviously many of them would wish to use this legislation to change the provision of energy within their buildings so that renters are directly connected to the energy bill. That is fine.

There is also a provision in here that the change in the service that is provided within the rent would be adjusted for in the rent. What would happen is that, prospectively, renters would be connected to the energy bill. There is leeway there for that very advisable thing to occur.

I believe there is incentive there. We can dispute about whether there is enough incentive, and essentially that is where we disagree. I want to assure Ms Poole that my suggestion that we would monitor carefully what is happening in this in no way should or shall, uncontested, be taken to mean that we are saying we are going to let things sit for three years. That is not at all what I said.

I will repeat what I said, which was that I personally will want to monitor the effects. The government will be informed by my monitoring, and I am sure by the Ministry of Energy's monitoring, about what is happening in rental accommodation vis-à-vis energy efficiency. We care about that matter.

We are also going to be watching how this legislation combines with other very active programs that we will be undertaking in cooperation with the Minister of Energy to increase energy efficiency within all residences in Ontario, but with some very particular concern and interest in what happens in large buildings where we can in fact achieve quite excellent returns on investments.

Let me assure Ms Poole that this is not meant to signify quiescence on our part at all. We are going to be pursuing active programs. It is just that we are not going to pursue them in the way that has been suggested here through this particular amendment.

Mr Brown said as soon as the capital cost of the renovation for energy efficiency had been paid off, then the tenants could expect to get some benefits from the drop in energy use, the payback periods. The priority items in large apartment buildings can be quite long, and Mr Brown is aware that two, three, four tenants might live in a particular unit during the payback period for a major item in an apartment renovation. So to say the tenant would get it back—I mean, a tenant will get it back, that is true, but not necessarily the tenant who paid for it. In cases where you are going to allow the cap to be broken, which is what you are suggesting in your amendment, I would suggest to you that the payment can be quite large. We do not see that as a kind of balancing off in terms of the fairness for tenants as a class, because the tenants who have to pay the bill may not be the tenants who benefit.

All in all, I think I have attempted to respond to the concerns and issues that have been raised around the amendment. As I say, it is one of the items that most interests me in terms of what we can be doing to make progress in the housing field. I can commit to the members of the opposition that you are going to see a Housing minister who does quite aggressively pursue energy effectiveness goals.

**Mr Jackson:** I did not hear from the minister's commentary any response to the point I raised the other day, which dealt with the massive injection of moneys to assist the conversion for the private sector, but there was no reference to the rental sector.

**Hon Ms Gigantes:** Do you mean the home owner as opposed to the renter?

**Mr Jackson:** That is correct. As I read the article, it implied the payment of the \$2 billion might come as an increase in hydro. All people pay hydro, not just people who own homes. Renters pay hydro as well in many respects. When the minister said she was aggressively pursuing that, can I ask her how she participated in that debate and how it ties to this legislation, which the Chair will ask me in a moment? Specifically, is your legislation drafted in such a fashion that you can accommodate a capital injection to a building, which is offered by the government possibly? That accrues to the benefit of the building and the tenants, but there is an impediment to that because of the manner in which this legislation is structured.



Just to review, the two questions are—I know you find it humorous, but that is why I am repeating it in a more simple form for you.

**Hon Ms Gigantes:** Thank you.

**Mr Jackson:** The first question is, to what extent have you been successful in having access for tenants to the kind of program your Minister of Energy announced last week? Second, is this legislation structured in such a way that you could participate in such a program? Those are the two questions.

**Hon Ms Gigantes:** I am not aware of the program to which you are referring, quite frankly. It may simply be that I have been preoccupied with other matters over the last few days, but I do not know whereof you speak. I will inform myself and attempt to come back with an answer for you. I know of no impediments in this legislation towards energy efficiency, the use of government grants. There are no impediments in my point of view, not at all.

**Mr Jackson:** Let me be specific then. To give an example, most previous government programs involved a portion from the government and a portion that was put up by the private sector. In this instance, the owner of the building would have to say, "In the name of energy efficiency, I will participate in the plan, therefore I will engage in this capital expenditure." If this corresponds with the necessary improvements to a roof or something else, then they may not be eligible because they pierce a certain level of expenditure. In that sense, it would be an impediment. In the name of conservation, they would not be able to take advantage of the grant because there is an impediment in the structure of rent control to the landlord taking on the necessary retrofits—I would not want to call it renovations—in the best interests of tenants, because it will reduce energy consumption, and of the building, because it will be more efficient. That is the example I am looking at.

**Hon Ms Gigantes:** You are alluding to an example for which you provide no figures on which anyone could make any comment.

**Mr Jackson:** In fairness, you are absolutely right. You are unaware of what your Minister of Energy has announced, and until such time as you are aware of it—

**Hon Ms Gigantes:** I can say to you that I see no impediments at all in this legislation that would exist for the general outline of affairs as you have described them. They would simply fold in with this legislation, in my understanding.

**Mr Brown:** I might in some way be helpful. I happen to remember that when Ontario Hydro and the Ministry of Energy were before the committee, they talked about a program as yet undefined which would be targeted directly at rental units. If memory serves, they were hoping to gain 600 megawatts worth of savings through this program.

**Hon Ms Gigantes:** I have tried to indicate to the committee that we are working very actively in the Ministry of Housing with the Ministry of Energy to pursue programs that will be proactive. They are not passive programs, sitting back monitoring, they are proactive programs. They will support those efforts that can be made through this

legislation. In my view, they will be providing a mechanism through this legislation, as far as the split on rents and benefits is concerned, for landlords and tenants. I see no difficulty in having a program work hand in glove with this legislation.

1420

**Mr Brown:** I am interested in some of the things the minister said, and I do not think we are on a different wavelength. I think we are talking about the same thing. What we are disagreeing about is whether the legislation as written will do what the minister wants it to do or whether my amendment will do what the minister wants to do. I do not think we are disagreeing about the principle. What we are disagreeing about is perhaps the incentives within it. I was interested in that way, and I think I agree with the minister, that the user of the energy is the one most likely to conserve it. The problem is that many of the things that can be done to conserve energy require capital expenditures.

**Hon Ms Gigantes:** Yes.

**Mr Brown:** The capital expenditure is something the landlord would do, not the tenant. Maybe we have a lot of altruistic landlords who are going to do for the tenant things that are not in their financial best interests, but perhaps we do not have as many as we would like. That is the problem I am trying to point out. I agree with the minister that we should be going in the direction she is saying. I just think the legislation in some ways precludes it happening to the extent that we would all hope.

The other question around that is that in some ways the minister's direction may encourage the use of electricity rather than natural gas or oil or whatever fuel as a source, because she is saying that we want to encourage the occupier of the unit, the one who pays the bill. In many ways, in large buildings the only practical alternative at this point is an electrical alternative. It is just not feasible to put a gas furnace or an oil furnace in each one. But it is feasible technically to do it with electricity, and I do not think we want to go in that direction either. I am just pointing that out as a problem.

With that I am going to give up the floor and urge the minister—if she decides to vote against this, that is fine—I would hope she would reconsider her position and come up with some amendment at a later date that would, at least in my view, incorporate the principle of what I am attempting to do and what I think she is attempting to do.

**Hon Ms Gigantes:** Mr Chair, in closing the discussion, because I believe Mr Brown is moving to that point, I very much appreciate the suggestions he has made, the points he has raised, and I look forward to working with him in this field over the next while. He obviously has both an interest and a fair amount of knowledge and with his permission I will tap them.

**The Acting Chair (Mr Morin):** Any further questions or comments? We will now vote on Mr Brown's motion on sections 22.2, 22.3 and 22.4.

**Ms Poole:** A recorded vote, Mr Chair.



The committee divided on Mr Brown's motion, which was negatived on the following vote:

**Ayes—5**

Brown, Daigeler, Jackson, Marland, Poole.

**Nays—6**

Abel, Harrington, Marchese, Owens, Ward, B., White.

**The Acting Chair (Mr Morin):** I am afraid the motion is lost. I think you understand that we will not be voting on section 22 for the simple reason that some of the sections were stood down, so we will now debate on section 23.

**Mrs Marland:** I have a question, Mr Chairman. I know that several days ago the government members switched horses midstream in the middle of the day, and I know that in the past the clerk has accepted the sub slips in the morning within the prescribed amount of time, which is within the first half-hour or 20 minutes of the meeting. When those sub slips come in in the morning and we have a full complement of members for the morning, does the sub slip have to say that they are going to be sitting as members in the afternoon session only, or does it mean that the sub slip identifies seven or eight government members for the day?

**The Acting Chair (Mr Morin):** My understanding is that you have to submit a form to the clerk and then that allows you to act immediately. Am I correct?

**Clerk of the Committee:** Mrs Marland, if I may just explain, the substitution slips have to be in to me by 30 minutes after the start of the meeting. The substitution slip can say that a particular member would be in the committee from 10 until, say, 11 or 12 and there would be another member substituting beyond that. A substitution slip is valid if it has more than one member substituting for a single member.

**Mrs Marland:** So there is no limit to the number of sub slips any caucus can submit to you?

**Clerk of the Committee:** As long as I receive them in the required time frame in the morning, that is correct.

**The Acting Chair (Mr Morin):** Are you satisfied with the answer?

**Mrs Marland:** I am satisfied with the answer, Mr Chairman. It is just that I have never seen such a retinue of changeover in a committee as I have on this committee, day by day, morning by afternoon. I think the government whip's office must be doing an ingenious amount of work trying to sort it out, because it is very hard sitting opposite to follow who the players are for the government. They change all the time.

Interjections.

**The Acting Chair (Mr Morin):** Order. Mr Jackson?

**Mr Jackson:** Punching a time card is nothing new to the NDP.

Just on that point, though, the clerk indicated that they were time-specific. Are you saying that they do not have to be time-specific, that you can, say, come in with a substitution slip with seven different names on it?

**Clerk of the Committee:** No.

**Mr Jackson:** Okay, that is what I did not hear you say. Have you received all your sub slips today in accordance with the guidelines you just shared with us, that no two persons can at any point confuse the Chair because they know specifically at what time they are not to be there and what time which member is supposed to be there?

**Clerk of the Committee:** Every substitution slip I have received from every caucus for today is in order and valid.

**Mr Jackson:** And where a second name appears, it has to explain the time.

**Clerk of the Committee:** It is explicit in terms of the time.

**Mr Jackson:** Very good. As the Chair of another committee, I was most anxious to get that ruling. Thank you.

**Ms Poole:** On that point of order, Mr Chair: The clerk has generously given each caucus 10 Smarties in the colour of our choice for our good behaviour this morning. I think she is going to withdraw those Smarties if we do not smarten up, so to speak.

**The Acting Chair (Mr Morin):** Thank you very much.

Section 23:

**The Chair:** The members will give their attention to subsection 23(1), which I believe is a government amendment, as printed in the bill. Questions, comments, explanations, amendments to subsection 23(1).

**Hon Ms Gigantes:** This is an amendment as reprinted, and what it says quite straightforwardly is that it is possible for a tenant to apply to the chief rent officer for a rent reduction.

**Ms Poole:** Although the Liberal caucus has expressed some reservations on how the ministry has treated rent reductions in this particular piece of legislation, we are not opposed to the principle of there being an opportunity for tenants to have a rent reduction if services and maintenance do not meet certain criteria. Our problem has been in the fact that we did not feel terms such as "inadequate maintenance" and "neglect" were properly defined in the act, with appropriate criteria to follow. Although we have problems with the way the ministry has dealt with rent reductions, we will support this section, which embodies the principle of the tenants being able to ask for a rent reduction.

1430

**The Chair:** Any further questions or comments? Shall subsection 23(1) carry? Carried.

I believe we now have a Conservative amendment. You will see it as subsection 23(1.1).

Mrs Marland moves that section 23 of the bill be amended by adding the following subsection:

"(1.1) The chief rent officer shall not proceed with an application under this section unless the tenant has provided evidence in the application to support it."

Do you have an explanation for your amendment?

**Mrs Marland:** This amendment provides for the fact that tenants, when applying for a decrease in rent based upon sections 24 to 26, can only do so if they have evidence to substantiate their claim.



We have had almost three months of hearing the government say why this is such a good bill and why it is so just and all that stuff, and we have certainly got lots and lots of comment on record in Hansard that the decision of the rent officer will be made based on evidence of both sides, whether we are talking about increases or decreases in rent or any other issue that is to be heard. Ms Parrish has reassured us that the decisions will be made based on the evidence, and I think this is a very straightforward amendment requiring that there is evidence in the application to support it.

**Ms Poole:** The Liberal caucus believes that this is a good amendment and should be added to the legislation. What this amendment basically does is say that if there is an application under the rent reduction section, evidence should be provided with the application to support the application. I would think that a lot of people would think this is common sense and that any application should be supported.

I will give you an example in kind that I think most members of this committee are familiar with. I have a number of buildings in my riding on Avenue Road which over the last number of years have undergone renovations. In the fall, a tenant made application for a rent reduction, claiming that there had been an illegal rent charged and asking for a rent reduction in a building that is owned by former Minister of Community and Social Services Zanana Akande.

We of course do not have access to this application, so we do not know what supporting evidence was provided with it, and I think is imperative that in this type of case where there is an allegation that an illegal rent has been charged and a tenant asks for a rent reduction, evidence be provided with the application to support that matter. Otherwise a person's name and integrity can be dragged down and people can be subject to the accusation that they have charged illegal rents without any evidence that this is indeed so.

This is the type of situation I think the Conservative amendment is meant to prohibit, and in no way, shape or form do I make comment on whether the tenant had legitimate reason to make this application or how bona fide the application is, since I have not seen it. It may well have provided evidence with it, but it may not. I do not know that and I would like to make that perfectly clear, but that is the type of situation where we want to ensure that the tenant is required to support the allegations with facts. This is going to be even more important in situations where you have a fairly high-profile person who is involved, like Ms Akande, so that if there is no supporting evidence, it does not take a lengthy rent review process to prove the facts. So the Liberal caucus will support this resolution.

**Hon Ms Gigantes:** I wonder if I could call upon members of the committee to turn their reprinted bill to page 42, on which we commence part II, procedure under the bill, and draw to the attention of members as they look at part II and the sections under part II the fact that it provides procedures governing all the operative sections of the legislation.

Interjection.

**Hon Ms Gigantes:** There is another amendment coming?

**Mrs Marland:** Will you tell us what you are reading?

**Hon Ms Gigantes:** I am going to stop and correct myself at this very moment. As Colleen Parrish points out to me, not only did the reprinted bill attempt to clarify procedures—and I would refer you in particular to section 52 on page 44 of the reprinted bill—but in order to make such procedures super clear, you will find in your books a proposed government amendment.

**Ms Poole:** On a point of clarification, my section 52 does not show any government amendment on the reprinted copy.

**Hon Ms Gigantes:** No, I am saying that you will find in your books a proposal to amend.

**Ms Parrish:** It was tabled last week.

**Ms Poole:** Oh. This is one of the newest set of amendments, which is not in the reprinted copy.

**Hon Ms Gigantes:** That is correct. But let me suggest that if you refer to section 52, you will see that 52 deals with applications, and the amendments to 52 which we are proposing similarly deal with applications. They describe what should be happening—actually, 51 also describes what should be happening—with an application by either a landlord or a tenant.

If we were to describe the way in which the application may be filed in each and every case where there is an operative section of the legislation saying a person may do this and a person may do that, we would have them scattered all throughout the legislation. I think the thinking behind the way this has been organized is to provide within one part of the bill a laying out of procedure as it applies to all the operative sections of the legislation.

1440

Therefore, I suggest that the addition in this section of the fact that evidence must be produced by an applicant for a rent reduction, a tenant who is making application for a rent reduction, would be redundant. Were we to put in such a requirement here, then in fact we would be changing the whole way in which the bill is organized, and in order to balance it we would have to go back through the bill and describe how to deal with applications at every step of the bill, which we have not done so far.

In any case, what we are saying in section 52, and will be saying in section 52 as we propose to amend it, is what is required of the applicant, the tenant who is making the application. Under our proposed amendment the tenant who is making the application does have to file what is called prescribed material and all other written evidence on which the applicant bases the application.

**The Chair:** Ms Poole, then Mrs Marland.

**Mrs Marland:** Just before Ms Poole speaks, I wonder if you could tell me which group of amendments this new one is in. Is it the group that was handed to us on the 20th?

**Ms Poole:** January 14.

**Mrs Marland:** Okay, and what number is it again?

**Ms Poole:** Section 52.



**Mrs Marland:** Thank you.

**Ms Poole:** I thank the minister for pointing out that there is a new, improved government amendment in section 52 which will make certain requirements that the applicant must follow when filing the application. In particular, the application's supporting material must be completed before this clock starts ticking.

However, I point out to the minister section 83 of that act. This is the concern that I have had. It says, "A rent officer may discontinue a proceeding if, in his or her opinion, the matter is trivial, frivolous or vexatious or has not been initiated in good faith." The Liberal caucus has an amendment to that section to change "may discontinue" to "shall dismiss." That is why we feel that, the way the legislation is right now, it does need clarification that the application shall not be proceeded with unless evidence is supporting the application. It could be a frivolous or vexatious matter and, as the legislation now stands, there is not a firm direction that the rent officer shall dismiss. It is at the discretion of the rent officer. The rent officer "may discontinue."

**The Chair:** I am a little puzzled here. The minister has pointed out that part II of the bill deals with the procedures. I am just wondering—I am doing this out loud, not with any predisposition—if this amendment can be placed at an appropriate point in part II if Mrs Marland is not satisfied that her concerns have been dealt with. Then we could go on and discuss procedure in the procedural part of the bill and discuss substance in this particular section. Maybe that is not the way to proceed, but it just seems to me that dealing with section 52 when we get there is better than dealing with it when we are dealing with section 23.

**Ms Poole:** We have no objection to standing this down and discussing it at the time we deal with procedural matters.

**The Chair:** I was not really suggesting, Ms Poole, that we stand it down but perhaps that we could consider making the amendment to a different section of the bill when we come to the procedural part.

**Hon Ms Gigantes:** On your proposal, I would not like to suggest, by agreeing to what you are proposing in terms of the way we order our work, that I think there is reason to doubt that section 52 as the government has proposed to amend it does not meet all the concerns that have been raised by both Mrs Marland and Ms Poole. I draw your attention to the proposed amendment by the government and Ms Poole's comment that this also relates to section 83, dealing with a vexatious or annoying or mischievous kind of application.

What we are proposing in the amendment to section 52, if Ms Poole will look at it, is the provision that unless the application is properly supported it shall be deemed to be withdrawn if it is incomplete. If it is incomplete, and here again I am referring to our proposed amendment, clause 52.1(3),

"(3) The notice shall inform the applicant that,

"(a) the applicant may file further material...; and

"(b) if the applicant does not do so within that period, the proceeding will be discontinued."

This provides an automatic recognition of what Ms Poole is referring to in section 83 as a discretionary discontinuance. I think she should feel assured that the government motion does relate to what she is talking about when she talks about section 83 and, further, that it covers not only the government amendment.

The original section 52, as had been printed, addressed the same question raised by Mrs Marland. I think that unless somebody wants to make an overall argument that we should not be dealing with procedures in one part of the bill, which to my view is a handy-dandy way for people to look things up and makes it easier for people to use the legislation—that is my personal feeling about it—but unless there is an argument that we should not be organizing the bill in this way, then I think they will both find that the concerns they have had around this and they have just raised really are being seriously addressed by the government.

**The Chair:** Minister, I was just trying to be helpful. I was not trying to predispose what the committee was deciding one way or the other. All I was suggesting was that if Mrs Marland was not satisfied with the government amendments to this particular section or indeed the way the bill was initially drafted, it might be appropriate at that point to put this amendment. But I am happy to deal with it now if that is the way the committee wants to handle it.

**Mrs Marland:** I will speak. Are you going to let sister speak?

**Hon Ms Gigantes:** Sister Margaret.

**Mr Jackson:** As long as she does not sound like Mother Superior.

**Mrs Marland:** I see you, brothers.

**Mr Jackson:** Just do not call her a Confederate.

**Mrs Marland:** I think we may have reached a point in these committee deliberations on clause-by-clause of Bill 121 where I might attempt to be somewhat gracious, because in reading the latest—in fact they are not the latest set of amendments from the government because we have the bill with printed amendments in it, we have government amendments as of 14 January and then we have another set of government amendments as of 20 January. The only good thing was that for the most part the opposition parties stopped creating amendments, but the government is still doing that.

But I do now see, since the minister has pointed out the group of amendments submitted to the committee on 14 January, that amendment under section 52 does cover the same issue and concerns the Progressive Conservative caucus was raising with our amendment to section 23(1.1). I will accept the fact that the government has seen the wisdom in our amendment and converted it into its own amendment. I am happy about that because I can see that now that my words are in their words and it is their amendment, they will vote in favour of it.

Either way, we accomplish the same intention that we had and it covers the concern we had with regard to the need for evidence to be available as part of the hearing process in order for the judgement to be made, so applications will have to have the evidence that we are talking



about in subsection 23(1.1). If you would like me to withdraw the amendment, if that would help, then I would be delighted to do that.

1450

**The Chair:** Thank you, Mrs Marland. Mrs Marland has withdrawn amendment 23(1.1).

We will then go on to subsection 23(2). Questions, comments? Shall subsection 23(2) carry? Carried.

Subsection 23(3). Questions, comments, amendments? Shall subsection 23—

**Mrs Marland:** Just one second. I think this section needs a little explanation.

**The Chair:** Perhaps Ms Parrish could help us.

**Mrs Marland:** Subsection 23(3) says, "If a rent officer believes that the rents of one or more rental units in the residential complex would be directly affected by the issues raised in an application under this section, the rent officer shall add the tenants of those rental units as parties to the application." When would it ever be the case that the tenants of those rental units would not be parties to the application?

**Ms Parrish:** Where the reduction affects only the unit that the individual is occupying. The service or the inadequate situation may be only in my unit. Only I am affected, so only I apply. I may say the landlord has shut down the swimming pool or the garage and thereby all the tenants in the building are affected. But it is possible that it is something in only my unit and therefore I am the only person in the building who is affected.

**Hon Ms Gigantes:** As another example, just to add icing to the substantial cake here, if only a portion of the tenants in a building had parking service and if the parking service were somehow in question here, then only those tenants who had parking would be affected. What we are talking about is a way of making sure that we are folding in those people who should be folded in but not folding in those people who are outside the terms of the application or the matter to be decided.

**The Chair:** Further questions, comments. Shall subsection 23(3) carry? Carried.

Subsection 23(4). Questions, comments, amendments? Shall subsection 23(4) carry? Carried.

On subsection 23(5) we have a government amendment as printed, I believe.

**Hon Ms Gigantes:** Correct, Mr Chair. This section that we have proposed as an amendment in the reprinted bill—it is marked in the reprinted bill as an amendment—is one that would allow a person who was a tenant and who would have been affected by the matter to be decided to join the application.

**The Chair:** Are there questions, comments or amendments?

**Mrs Marland:** Can you give us an example of a person who is not a tenant? Are you talking about somebody who is an official agent?

**Ms Parrish:** I suppose you could imagine a factual situation where that would apply, but the person has to have been personally affected by the discontinuance or

reduction of the services and facilities. What this is really covering is a situation where the application occurs after the individual has left the building.

Let's take the example that the parking is taken away on January 1 and I move out on April 1. An application is made on February 1; it is not heard until July. I can get that reduction for the period that I was in the building even though in July I am no longer a tenant.

**Mrs Marland:** The way it is written, I would respectfully suggest, is if you look just at the actual wording, of subsection 23(5) it says, "A person who is not a tenant may make an application" etc. It would be better I think to say, "A person who is no longer a tenant," because the way it says a person who is not a tenant, where it says, "if the person was a tenant and was affected by," I have difficulty with this anyway and I am going to vote against it. How far back would you allow this kind of clawback into previous tenancy to go? Is there any limit as to how far back you would let that clawback happen?

**Ms Parrish:** You have to have been a tenant who was affected by the discontinuance or reduction of the services and facilities so it is not likely people are going to reach back far into time. If your building is in very bad shape and it gets to the point where you move out because it is so terrible, I guess there is a question as to whether you should be compensated for the period in which you had to pay rent and you did not get what you paid for and whether you should be forced to stay in the building just in order to make this application.

**Mrs Marland:** If the application allows a rent decrease for any of these reasons, are you now saying that the decrease is retroactive?

**Ms Parrish:** As we discussed earlier, the reduction in rent is effective on the day that the service was first withdrawn. It does not go beyond that. It can go backwards because obviously the service has to be withdrawn and then you make the application. If you did not do that, it would always be to the benefit of the landlord to withdraw a service because he would always benefit for some period while the application was being done. In the case of service withdrawal, if there is a finding that there was a service withdrawn, it is effective on the date that the tenant can establish that the service was withdrawn.

**Mr Marchese:** There is a question further to that. I thought the question being posed was, how far do you go back? Is there a limit—1985, 1980—because the service could have been withdrawn at any time in the past? Are we saying there is no time limit in the past in terms of when this service was withdrawn?

1500

**Hon Ms Gigantes:** That is correct. That is what we are saying. If I could just add, there is good reason for that. If the service were withdrawn and there were no accommodation made in the rent for that, then the rent which is being charged cannot be said to be a legal rent if that means it is above what it would have been had the service not been withdrawn.



**Mr Marchese:** I understand your reasoning. It is just a question of whether one goes back 20 or 30 years or whatever.

**Hon Ms Gigantes:** No, because the definition of our maximum legal rent would go back only as far as 1986. Would they be able to go back before 1986 to seek—yes, they would.

**Ms Parrish:** Yes. It would depend on whether they were a pre- or post-1976 building.

**Hon Ms Gigantes:** In theory, yes. The likelihood of people going very far back in time is very small at this stage because presumably the turnover among most tenants would mean that—and even people's memories would be such that once this section is declared and operative, their recollection that cable had originally been included in the rent and was now a separate item or whatever would have faded. However, there it is, and it is connected with the concept in the legislation which has been maintained through more than one bill now of the maximum legal rent.

**The Chair:** Shall subsection 23(5), as reprinted, carry? Carried.

Section 23, as amended, agreed to.

Section 24:

**Ms Poole:** We do have a Liberal amendment to subsections 24(1) and (2). I do not know whether you would like the minister to comment on subsection 24(1) prior to my making my motion.

**Hon Ms Gigantes:** Subsection 24(1) is as it was originally in the bill. It is one of the basic principles we have identified as important in this legislation, which is that where there is an extraordinary decrease in operating costs the tenant has the right to make an application for a rent reduction.

**Ms Poole:** I move that section 24 of the bill, as reprinted to show the amendments proposed by the minister, be struck out and the following substituted:

"24(1) The tenant may base an application on an extraordinary decrease in operating costs for municipal taxes, hydro, water, heating, a land lease from a government, a government agency or a financial institution or any other prescribed operating cost category for the whole residential complex.

"(2) A decrease in operating costs for an operating cost category is extraordinary if the decrease, expressed as a percentage, is at least 20% less than the percentage set out in the corresponding operating cost category recognized in the table referred to in subsection 12(1) for that category."

**Hon Ms Gigantes:** On a point of order, Mr Chair: I believe Ms Poole means 50%.

**Ms Poole:** I do. If I said 20%, it means I probably too do need glasses and I should see to that very soon. Correction, Mr Chair: that should be "at least 50%."

**The Chair:** Thank you. I am sure we are interested in the explanation.

**Ms Poole:** I do not want to belabour this point because I believe the minister has already signified that the government is unwilling to consider this for either extraor-

dinary increases for the landlord or extraordinary decreases for the tenant.

What this amendment would do is make two changes. The first is that it adds a category: "a land lease from a government, a government agency or a financial institution." I think it is highly unlikely this would be used on a tenant application for extraordinary decrease. However, I put it in to mirror what I had done for the other section.

The secondary part I think is very valid, with regard to tenants, and that says "any other prescribed operating cost category for the whole residential complex." What that means is that if a year from now the government felt there was another category for an extraordinary decrease application by a tenant it could do this through regulation and would not have to open up the legislation in order to do it.

The second part I may as well deal with now since it has been read into the record. In subsection 24(2) the only change is that we have said "an operating cost category" instead of just dealing with the municipal taxes, hydro, water and heating. That was changed to cover the unlikely event that the government was going to accept the first part and allow operating cost categories through regulation. I think we explored this quite fully at the time we did the increase section so I do not have any further comments to make.

**The Chair:** Are there further questions or comments?

Shall Ms Poole's amendment to section 24 carry?

All those in favour will please say "aye."

All those opposed will please say "nay."

In my opinion the nays have it.

Motion negatived.

**The Chair:** Mrs Marland moves that subsection 24(1) of the bill be struck out and the following substituted:

"(1) The tenant may base an application on an extraordinary decrease in operating costs for hydro, heating, municipal taxes, garbage tipping fees, water and sewage fees, insurance, cable television, superintendent's salary and rent, maintenance and those provincial and federal taxes the landlord must pay in order to maintain the residential complex."

Do you have an explanation? It looks remarkably similar to the increase in section 14, as Ms Poole's did.

**Mrs Marland:** It may look remarkably similar, but it does have a different word in it, and the word is "decrease." I wonder if the minister is willing to tell us what the word "extraordinary" means in subsection 24(1). We had to use it in our amendment because it was in the government bill, to keep the language all the same. Is there a definition or a description of what would be an extraordinary decrease?

1510

**Hon Ms Gigantes:** I will refer the member to subsection 24(2). There is a definition of an extraordinary decrease.

**Mr Marchese:** What is the reference again?

**Hon Ms Gigantes:** Subsection 24(2): "A decrease in operating costs for municipal taxes, hydro, water or heating for the whole residential complex is extraordinary if



the decrease, expressed as a percentage, is at least 50% less than the percentage set out in the corresponding operating cost category recognized in the table referred to in subsection 12(1) for that item." In other words, the guideline.

**Mrs Marland:** Thank you for the answer. I recall back in subsection 13(7), when we had this discussion, I was referred to section 24.

**Hon Ms Gigantes:** I think you are looking for section 14.

**Mrs Marland:** No, actually subsection 13(7) deals with decreases—decreases, increases; same thing as far as percentages are concerned—on page 18.

**Hon Ms Gigantes:** Yes. If you look at section 14, you will find the converse or the reverse or the inverse—I can never figure out which is which—of the section 24 decreases we are talking about.

**Mrs Marland:** Subsection 14(2). Of course I have said before that, first of all, it concerns us that there are some other items which are not included in operating costs or not recognized as operating costs by the government. You do not recognize garbage tipping fees, do you?

**Hon Ms Gigantes:** That is correct. We have been around this one before. You are right on both points.

**Mrs Marland:** Do you think it is just that where there is a decrease one party to the contract is allowed consideration, and where there is an increase one party to the contract is not given the same consideration?

**Hon Ms Gigantes:** That is a very general kind of proposition. To what are you referring?

**Mrs Marland:** I am referring to subsection 24(1), which refers to the basis under which a tenant may make an application for a decrease. Do you have a matching clause in this bill for where the landlord may make an extraordinary increase?

**Hon Ms Gigantes:** Yes. I just referred you to that. It is section 14, and I believe you identified subsections 14(1) and 14(2).

**Mrs Marland:** Mr Chairman, are you going to say that our previous amendment, subsection 12(1), is really a corresponding amendment so this is no longer needed since we lost subsection 12(1)?

**The Chair:** No, I am not saying that at all. It is different because it provides for a decrease. That is substantially different, but I think the issues are substantially the same.

**Mrs Marland:** Yes, I agree, and the same arguments I gave on subsection 12(1) I think apply here also, even though it is in the other direction. That is why I would like a vote on this amendment, and let the amendment stand.

**The Chair:** Further questions, comments or explanations? Shall Mrs Marland's amendment to subsection 24(1) carry?

**Hon Ms Gigantes:** It is a temptation, but no.

**The Chair:** All in favour? Opposed? The motion is lost.

Now I believe we are back to subsection 24(1) as printed. No, subsection 24(1) is in the original bill.

**Hon Ms Gigantes:** That is right.

**The Chair:** Questions or comments on subsection 24(1)? Shall subsection 24(1) carry? Carried.

On to subsection 24(2) as printed.

**Hon Ms Gigantes:** This is an amendment. There is a cross-reference to the table referred to in subsection 12(1), which is the table representing costs included in the guideline. This subsection defines the decreases as "extraordinary" when there is a decrease which is at least 50% of the corresponding percentage as a portion of the guideline amount for that respective category. I hope I have made myself clear. I know what it means, but it is tricky to say.

**The Chair:** I am sure all members followed that. Questions or comments? Ms Poole. We found one who did not follow it.

**Ms Poole:** Deep in her heart, I am sure the minister knows what this is all about. If Colleen says we should vote for it, I am sure the government members will do it. Therefore it becomes quite irrelevant whether we vote for it at all.

**Mrs Marland:** May I ask a question?

**The Chair:** Sure you may.

**Mrs Marland:** This is an interesting example, when we were talking about who has to provide evidence. I notice that in subsection 24(3) it says, "Before making an order on an application under this section, the rent officer shall consider any evidence provided by the landlord concerning an extraordinary increase in operating costs for municipal taxes, hydro, water or heating for the whole residential complex."

If the tenant had evidence as well, which the tenants may well have—the landlord may have evidence—

**Hon Ms Gigantes:** No, they are not applicable—

**Mrs Marland:** Would the rent officer not be interested?

**The Chair:** Mrs Marland, just looking at my book—I am sorry I did not remind you—I understand there is an amendment by your party to this section which might be more appropriate for you to put, and then we can discuss your amendment.

**Hon Ms Gigantes:** Mr Chair, I am afraid I have led you astray. When I look at the copy of the proposed Conservative amendment, I note that the proposed Conservative amendment to subsection 24(2) depended on passage of related amendments by the Conservatives to subsection 14(2). Therefore this amendment which I had drawn to your attention would not longer be relevant.

**The Chair:** From the Chair's point of view it is always difficult to make that ruling when the amendment technically has not been placed.

**Hon Ms Gigantes:** True.

**The Chair:** Mrs Marland will have the opportunity of deciding. Your logic is fine, and in that case she will not make the motion, or she will make the motion and be surprised at what I might rule.

1520

**Mrs Marland:** I have it here. Would you like to hear my amendment first? I have been advised that my amendment should read subsection 24(4) rather than subsection 24(3).

**The Chair:** No, I think we are on subsection 24(2).

**Mrs Marland:** Pardon me. No, I do not plan to move subsection 24(2).

**The Chair:** Thank you, Mrs Marland. We can then continue debate on subsection 24(2).

**Hon Ms Gigantes:** I am with you, Margaret, wherever you are.

**Mrs Marland:** I thought we were on subsection 24(3), but we are on subsection 24(2)?

**Hon Ms Gigantes:** Yes.

**Mrs Marland:** Okay. Well, I was not about to make any comments.

**The Chair:** Further questions or comments to subsection 24(2)?

Shall subsection 24(2), as printed, carry? Carried.

Subsection 24(3): Questions, comments or explanations?

**Hon Ms Gigantes:** Members will note that this is an amendment which is printed in the bill. It sets out the procedure that the rent officer shall use in looking at an application for a rent decrease by a tenant. It says that the rent officers shall, at the same time—in fact before looking at the application for the decrease in rent—look at any application or any evidence which the landlord can produce concerning a counterbalancing extraordinary increase. This is a subclause which is intended to make sure, as we have tried to do in other sections of the bill, that we are dealing with both matters which bear on a question at the same time rather than through separate decision-making processes.

**Mrs Marland:** Evelyn, you are getting as bad as the lawyers.

**Hon Ms Gigantes:** But it is going to work.

**The Chair:** Thank you. Questions or comments on subsection 24(3)?

**Ms Poole:** Any time a section tries to reduce the amount of bureaucracy and to reduce the number of decisions to a lesser amount, as long as the amendment is done in a manner that is fair to all parties, the Liberal caucus is pleased to support it. In this case we will be supporting it.

**The Chair:** Further questions or comments?

**Mrs Marland:** I still wonder whether it is possible that the rent officer might like to consider evidence from the tenants as well. I know it is the landlord in this case who is applying for the increase.

**Hon Ms Gigantes:** No, this is the tenant application we are dealing with in this section. Section 24 is dealing always with the tenant application to reduce rent. If you look at subsection 24(1), you will see the tenant identified as the initiator in this section.

**Mrs Marland:** Right. What you are saying in this section then is that the rent officer, although he is considering the tenant's application, must also consider evidence by the

landlord concerning extraordinary increases in his operating costs.

**Hon Ms Gigantes:** That is right.

**Mrs Marland:** That is a very good amendment.

**Hon Ms Gigantes:** How about that?

**The Chair:** Shall subsection 24(3) carry? Carried.

**Mrs Marland:** That is an excellent amendment.

Interjections.

**Mrs Marland:** We should send this amendment out to all the landlords, because they will be very happy to see that.

**Ms Poole:** I think we should adjourn while we are ahead.

**Hon Ms Gigantes:** No, no. We have to keep going while we have—

**Mr Abel:** We're on a roll.

**The Chair:** We now have, I believe, subsection 24(4), which, just for members' information, is numbered as subsection 24(3), the PC motion. If you are looking for it in your book, it is subsection 24(4). Mrs Marland.

**Mrs Marland:** I do not think we could get through these 230- or 240-plus amendments without the help of the lawyers, so when I said the minister was getting as bad as the lawyers, I did not really mean that the lawyers are bad. I do not think any of us could do it without the lawyers.

Interjections.

**The Chair:** Order.

Mrs Marland moves that section 24 of the bill be amended by adding the following subsection:

"(4) A rent officer shall not consider a decrease in operating costs that is caused by an eligible capital expenditure by the landlord that increases energy conservation unless the landlord has recovered the costs of those capital expenditures."

Mrs Marland, perhaps you would like to present us with a brief explanation.

**Mrs Marland:** This amendment will ensure that landlords who undertake capital expenditures which include the implementation of energy-conserving features are allowed to realize these costs before the rent can be decreased by a tenant application. As the legislation currently stands, it is faster for a tenant to apply for and receive a decrease in rent than it is for the landlord to apply for and receive an increase as a result of capital expenditures, including the installation of energy-conserving features.

You know what is really interesting when we talk about this energy conservation aspect? The truth of the matter is that when the rent officer, this almighty wizard, considers all the evidence from both sides of the issue, the landlord will be putting forth all his operating costs, all his bills. These will include his heating and, if it is air-conditioned, his cooling bills, along with all the other costs of operating the building.

It just may be that in the long term it is in the interests of the tenants of that building to have some energy conservation methodology applied to the operation of that building, whether it be a new high-efficiency furnace or the



replacement of windows, or whatever standard energy conservation methods are known, and by the application of those systems or methods, the cost of fuel for heating and/or cooling costs is reduced. I think the government would be hard placed to decide that energy conservation is not in the best interests of the tenants if it brings down the operating costs of the building by reducing those costs because you are reducing the costs of fuel.

It may be that after the capital installation of those energy conservation methods, everybody will benefit. So it seems to us that this is a very logical amendment to recognize that when we are talking about energy conservation it is a very different category than a lot of things we have talked about, because the merits of energy conservation are not debatable. In fact, we may yet be blessed with a Minister of Energy who mandates energy conservation methods in commercially leased properties, be they residential or business properties.

1530

I want to read a comment that was submitted to me by my colleague Charles Harnick, who is the MPP for Willowdale. It says:

"Bill 121 is a deterrent to landlords who wish to invest in energy conservation devices.

"Under Bill 121, any expenses which a landlord incurs through reduced energy consumption, specifically water or electricity, may not be collected because of tenant applications for rent reduction.

"If a landlord received any cost benefits through investments in energy conservation, the tenants could then turn around and apply for a rent reduction, thus nullifying any savings and quite possibly not even allowing the landlord to cover his costs.

"Quite simply, the government is providing no incentives for energy conservation. Landlords will not be able to benefit from the investment. Efforts by a landlord taken towards the installation of energy conservation products have to be done altruistically. What incentive is the government offering to landlords to make investments which benefit the environment? None."

In Charles Harnick's riding of Willowdale, "a company which distributes water conservation products," for example, "has been told by various residential landlords across the province that because of Bill 121 they will not be investing in any energy conservation products.

"The end result of Bill 121 will be another example of the government policies that hurt the housing industry, small business and now, though inadvertently, the environment."

**Hon Ms Gigantes:** Mr Chairman, I missed the name, if Mrs Marland gave the name, of the landlord involved.

**Mrs Marland:** No. I do not have the name of the landlord or the water conservation product.

**Hon Ms Gigantes:** Mr Chair, let me just say to Mrs Marland that I would be most anxious to have ministry officials speak to this landlord if the landlord does not understand how Bill 121 would work. I will leave that offer with her.

**Mrs Marland:** I am trying not to prolong the debate at this point. I could shorten the debate if you could tell us if you are going to support my amendment.

**Hon Ms Gigantes:** Thank you for the offer, but no.

**Mrs Marland:** You are not? Can you explain why you are not? I do not expect you to answer for the Ministry of the Environment or the Ministry of Energy, but can you explain why the Ministry of Housing is not showing leadership here by encouraging the conservation of energy through this bill?

**Hon Ms Gigantes:** We have provided leadership with a cap, if you want to put it that way. What we have provided is that landlords may make an application for above-guideline increases in rent. They may make an application which shall extend as far as three years in terms of above-guideline increases for the capital involved in an energy renovation. But we are not going to put tenants in the position where they lose other rights under the legislation because the landlord has made a choice to do an energy renovation as opposed to some other type of work.

It is important that we treat each of the items under this bill in a balanced way. Otherwise, we may have applications by landlords for energy measures which have low paybacks, and we do not want to induce that effect. We may have situations where landlords undertake renovations which they would not otherwise undertake if the regular application of the legislation were to apply.

I am going to ask Colleen Parrish to give an administrative understanding of what would be involved here because I think she has given it a great deal of thought.

**Ms Parrish:** From a straight practical viewpoint, it is sort of difficult for us to see how this can work, because in order for somebody to make an application for a decrease or, for that matter, for an increase, what you have to do is say, "Let's take year one, last year, and compare it with this year and decide whether there has been a decrease." So the first thing you have to do is say: "The fuel bill last year was \$10,000. This year it's \$9,000." That is the first test: Is there a decrease? And it has to be from the previous year.

If you say that you cannot apply for this until the complete cost of the expenditure is completed—and these are amortized in some cases, for example, new furnaces, over 10 or 15 years—essentially you can never apply because you can never compare the previous year. You would have this 15-year gap in the middle, and the likelihood that there would be a decrease during this 15-year period is remote. It just does not work. The way it works is, you have to compare one year with the next year and then you benchmark it against the amount that is allowed in the guideline to see whether or not this has been an exceptional increase or decrease.

So if you say that this capital repair for energy conservation has to be completely expended and it is paid for over a long amortization period, essentially what this means—and this may be what you intend, but I am not sure—is that you could never do it because you would never be able to get the comparison periods. So just from a



straight, practical viewpoint, I do not think it would really work unless the amendment was reworked in some way.

The other point I would make is that the first test is that there has to be an absolute decrease in costs. Having worked with the Ministry of Energy staff, and I believe they also made representations before this committee, even with energy-efficient equipment and so on being put into buildings, it is very rare that you get an absolute decrease. What happens is you have a slowing down in the rate of increase, so instead of having a situation where your fuel bill goes up every year by 10%, your fuel bill starts to climb at a lower rate, but it is relatively rare that you get an absolute decrease. Even assuming that will happen, if you juxtapose the amortization period in here, it could simply never happen.

**Mrs Marland:** You talk about it from a straight, practical viewpoint. From a straight, practical viewpoint can you tell me how your bill would encourage landlords to do any energy conservation?

**Ms Parrish:** Again, I do not want to enter into a debate about this. I would point out it is not my bill, it is the government's bill, but what I would say is, first of all, within the group of capital which is recognized, it includes energy conservation. When a landlord reduces the rate of increase in fuel bills or utilities due to energy conservation, he will actually have lower costs than are built into the guideline. For example, the guideline will say fuel goes up on average 5% across Ontario. My fuel bill, because I have done all this energy conservation, will only go up 2%. The tenants cannot apply for a rent reduction because there has been no absolute decrease. That is my incentive as a landlord to be below the average, because I get compensated for that in the inflationary guideline and therefore I am essentially ahead of the game in terms of my costs.

**Mrs Marland:** Just responding to what you said a little while ago, would you agree that energy conservation does benefit the tenant?

1540

**Hon Ms Gigantes:** It depends what you mean by benefit. If you mean a draughty window is properly sealed, there will be a benefit in terms of comfort. If you mean the tenant can share in a reduction in the cost of rent, the tenant benefits. So it really does depend on what you mean.

Just as a small point, I would like to thank Colleen Parrish for that very succinct and clear explanation. I am sure on behalf of other members of the committee, I can express their thanks that she was able to do that instead of my attempts to do it. I thought that was really quite great.

**Mrs Marland:** Madam Minister, do you agree that energy conservation would benefit the tenant?

**Hon Ms Gigantes:** I gave a couple of possible answers to that.

**Mrs Marland:** You said it depends on what you mean.

**Hon Ms Gigantes:** Yes, it does depend on what you mean.

**Mrs Marland:** So if it removes a draughty window, you agree; if it results in a lower operating cost for the building, you agree.

**Hon Ms Gigantes:** If the tenant is able to share in that lowered operating cost, if it prevents the expenditure in public terms of moneys which have to be invested in capital to produce extra energy, and those costs are borne in higher rates and then reflected in rents, there is an overall benefit to all tenants and all ratepayers in the province, direct or indirect. There are many possible benefits.

**Mrs Marland:** You agree that energy conservation would benefit the tenants in the areas you have described. Would you agree that energy conservation also benefits the environment?

**Hon Ms Gigantes:** I think these are rhetorical questions.

**Mrs Marland:** No, they are not. They are very serious.

**Hon Ms Gigantes:** If tenants are called upon to pay directly and sharply for every investment undertaken by a landlord, then I would have to say you are getting into an area where for tenants the disbenefits may be greater than the benefits at the personal level.

**Mrs Marland:** That was not my question.

**Hon Ms Gigantes:** It may not be your question, but I think what you are doing through this amendment, which I hope your question is related to, is proposing that tenants should lose some rights, which we generally provide in this legislation, that relate to extraordinary decreases, because a landlord has chosen to make an energy conservation investment. The way it has been set out, as I think Colleen Parrish explained very well, it is very difficult to imagine that being applicable. What you have done in any practical sense is removed the possibility that the tenants might receive a benefit by way of a decrease because of a very large decrease in energy expenditures.

**Mrs Marland:** I am going to have to ask for a recorded vote on this amendment because I think it is pretty remarkable that any minister today would not be supportive of any help or incentive that can be given to have energy conservation practised in this province by any property owner.

**Hon Ms Gigantes:** But what about the tenants?

**Mrs Marland:** Excuse me, I have not finished. It is even more pertinent when it is the Minister of Housing who is not willing to look at energy conservation when her ministry is responsible for whatever the percentage of physical plant in this province comes under the category of housing, from single-family homes to multi-high-rise apartment dwellings.

We obviously can deal with this subject through the Minister of Energy and the Minister of the Environment, but when Ms Parrish says, "There is an incentive for the landlord to reduce his operating costs in his own interests by energy conservation methods because it is one of those categories for which he is eligible for his 5% operating cost"—the thing is that energy conservation will not happen, because you only have to look at the kinds of tax increases that any property owner is going to face in this province because of the announcements that were even made two days ago where that 5% will be eaten up very quickly by the increase in the municipal taxes because of



the 1% cap on transfers between the provincial government and the municipalities.

The landlord will not be in a position to do anything else if he is able to pay his property taxes at the increased rate they will be from the municipalities and the school boards, because the fact is that the municipalities and the school boards simply will not have anywhere else to get their money from. Knowing that, if we do not pass something that gives an incentive for energy conservation to property owners, it just will not happen.

This is a very reasonable amendment. The irony is that it is like a lot of things the public is willing to pay for if it is, in the long term, something that can be identified with saving the environment. The public is willing to pay higher hydro rates if the amount they pay that is higher goes totally to environmental programs in the production of electricity in this province. By not supporting this amendment you are denying the opportunity for any energy conservation, which is something I am sure 90% of all tenants would be interested in being part of even if it meant they had a 1% or 2% increase in their rents.

To say they can do this through their capital allowance, they can do this through their operating allowance, sure they can if they do not have increases in any of those other areas. But you and I know very realistically that without energy conservation their fuel costs are going to go up, because we know we are facing 14%, maybe 18% increases in electricity alone in this province this year and next year and so on. Now we know what the property tax increase will be as well.

It is pretty sad and a pretty regressive thing that we do not have a Minister of Housing who can see some way to give an incentive for energy conservation in buildings in Ontario in 1992. When we do vote on this amendment I will ask for a recorded vote.

**The Chair:** Further questions, comments or amendments to Mrs Marland's motion?

**Mrs Marland:** Can we have your substitute? We are checking.

**Mr Morin:** Everything is under control, Margaret. Mr Chair, could we wait five minutes for a recorded vote.

**Mrs Marland:** We can wait five minutes or 20 minutes.

**Hon Ms Gigantes:** Five, please.

The committee recessed at 1551.

1556

**The Chair:** Would members please take their seats. A recorded vote, I believe, has been requested.

The committee divided on Mrs Marland's motion, which was negatived on the following vote:

**Ayes—4**

Daigeler, Marland, Morin, Poole.

**Nays—6**

Abel, Gigantes, Harrington, Johnson, Marchese, White.

**The Chair:** Mrs Marland's motion to subsection 24(4) is lost. The Liberal motion to section 24.1. Ms Poole.

**Mrs Marland:** Mr Chairman, before we move to this motion, I have to ask one more question about process, about the government members on this committee. Where we have a split in attendees in a half-day—we have already discussed where we have different people in the morning and the afternoon. But where we have a split between members in an afternoon coming and going—we now have Mr Mammoliti back. We had Mr Ward here; he is gone. We now have Mr Marchese. This has all happened this afternoon and I have forgotten who was here before you. I really should have been writing all these names down. What happens where you have members splitting a half-day in terms of compensation to those members? Does that mean you all claim for the half-day, or are some of you here out of the goodness of your heart?

**The Chair:** Mrs Marland, all I can do is inform you that all members of the committee are properly substituted and that everything has been done according to the rules.

**Mrs Marland:** I am not questioning that they are properly substituted. I was assured of that earlier. I wonder how many members we can bring in and receive remuneration for in a given day and if we can split afternoons or split mornings, which is what is now happening. I have never seen in the seven years I have been here such a parade of members substituted in a given day. Then this afternoon we have it going on.

**The Chair:** Mr White, and then Ms Poole.

**Mr White:** First I would like to commend Mrs Marland for bringing out the interest and dedication of our members in this legislation and the importance it has for our government. In consequence, a deluge of members are interested, sitting on the committee without necessarily even being substituted in, but for the purposes of participating in this debate and understanding the ramifications.

Second, Mrs Marland's question, where it relates to remuneration is not, properly speaking, a procedural question but an administrative one she should probably address to the controller or some other body rather than the Chair of the committee. It is, I repeat, to the best of my knowledge, not a procedural question.

**Mrs Marland:** Actually, it is the Chairman of the committee who has to sign our claim forms.

**Ms Poole:** Mr Chair, perhaps I could be helpful. In other circumstances I have seen where this has happened. My understanding is that there is only the allocation for one member allowed, and if several members are sharing and substituting, it is up to them to work out who gets what share or whether one person would get the whole thing and the others do it as a favour, or how it would work. It certainly is up to the individual members to work it out.

The important point from the taxpayers' point of view is they would pay the same amount if there is one person sitting there for the day or if there are three people sharing that space for the day, and I think that was probably Mrs Marland's point. So what is happening is probably not inappropriate.

**Mr Marchese:** The member just offered an answer to the question, which is appropriate for me. Could we just have the clerk give more information, if there is any, on that?

**Clerk of the Committee:** In fact, any member who substitutes for any other member may fill out an expense claim for the day, whether or not there is more than one member subbing for another member.

**Ms Poole:** For the full amount?

**Clerk of the Committee:** Yes.

**Ms Poole:** That is not what they used to do to us.

**Clerk of the Committee:** Members have the option of not filling out an expense claim, and I will tell you that members have chosen not to do so in some cases.

**Mrs Marland:** You know, Mr Chairman, this is very significant. If we have more than the allotted number per caucus substituting in—a legal substitution, meaning they bring a substitution slip from their caucus whip and in turn file an expense claim form—then this is really milking the cow, I suggest, because if the committee structure is six government members, three Liberal members and two Conservative members, I would think the committee budgets for that number of members per caucus.

It would be interesting to see how many government members we have had sit on this committee today. I think it is very important when this committee approves its budget, which it does, that we have some idea how many government members are going to make claims for expenses. As a member of the standing committee on the Legislative Assembly which deals with members' services, I can tell you this will be brought before that committee. Why should not any caucus start doing what you are doing if that is happening? I have never seen it happen in seven years.

**The Chair:** I have a number of people still on the list, but I think we could more properly have this conversation, as Mrs Marland suggests, at the Legislative Assembly committee. The business of this committee at the moment is to proceed with clause-by-clause review of Bill 121. I am sure members who are concerned will take their concerns to the Legislative Assembly committee. Ms Poole, I assume, is going to move section 24.1.

**Ms Poole:** I am sure it is, whatever 24.1 is, Mr Chair. I just wanted to make one point of clarification in this regard. I do not think there should be any question that the government should be allowed to substitute people in to protect its vote. That should be perfectly acceptable and I think that is the reason they have had a number of people substituting in. If this is going to be raised at the Legislative Assembly committee, it should be on the basis of remuneration for three members to do one member's job. As I said, my own experience before is that we have shared, and maybe we can target on that particular aspect if it goes from this committee to Legislative Assembly.

**The Chair:** It is not in our purview to go from this committee. I am suggesting some members might want to

do that. Our business right now is to deal with Bill 121. Section 24.1 is what I am looking for.

**Ms Poole:** That is ours.

**The Chair:** That is what I thought you were moving a moment ago.

Ms Poole moves that the bill be amended by adding the following section:

"24.1 The tenant may base an application on a decrease in financing costs for the residential complex of at least 2 per cent."

**Ms Poole:** I do not intend to speak to this at any length, because we had a very extensive debate earlier on about the possibility of including both increases and decreases in financing costs in the legislation. The minister has made it quite clear that she is not prepared to accept applications based on increases in financing costs, which would benefit the landlord, or applications on decreases in financing costs, which would benefit the tenant.

Particularly in these times where the interest rates are extremely low, it would be definitely to the tenant's advantage to have this kind of recourse. However, since the minister has already stated quite emphatically that she is not willing to extend this right to the tenants, I do not intend to engage in debate on it.

**The Chair:** Further questions or comments on Ms Poole's amendment of section 24.1?

**Ms Poole:** A recorded vote, Mr Chair.

**The Chair:** A recorded vote has been requested.

The committee divided on Ms Poole's motion, which was negated on the following vote:

#### Ayes—5

Daigeler, Jackson, Marland, Morin, Poole.

#### Nays—6

Abel, Harrington, Johnson, Mammoliti, Marchese, White.

**Ms Poole:** Another close one, Mr Chair.

**Mrs Marland:** Mr Chairman, could I just ask how it was that we dealt with section 24.1 after section 24(4)?

**The Chair:** Because that is, as you know, Mrs Marland, the procedure for introducing a new section to the bill. It is not subsection 24(1), it is section 24.1. Shall section 24, as reprinted, carry?

Section 24, as amended, agreed to.

**Mrs Marland:** Did we not have an amendment to section 24 also?

**The Chair:** I am sorry. Thank you, Mrs Marland.

**Mrs Marland:** It proves that some of us are awake.

**The Chair:** The Chair appreciates that, Mrs Marland. So we will back up and entertain Mrs Marland's motion, section 24.1.

**Mrs Marland:** It is a little confusing for everybody, because I am now moving a motion that has the same number that Ms Poole just moved.

**Mr Daigeler:** But not the same point. It makes the same points but it does not have the same points.



**The Chair:** Similar but not the same.

**Mrs Marland:** No, but it has the same number.

**Ms Poole:** Similar but not identical.

**Mrs Marland:** But it has the same number. How does that work?

**The Chair:** I might ask legislative counsel, who advises us on the numbering, to explain to Mrs Marland how the Liberal motion and the Conservative motion have the same number.

**Mr White:** Before we do that, Mr Chair, should we not have unanimous consent to reopen section 24, having just closed it?

**The Chair:** I have been told that is not necessary, because this is a separate section.

**Ms Baldwin:** That is correct. Section 24.1 is a number all its own that when the bill is reprinted will be a number without a point. If 24 is 24, 24.1 will be 25. As to why your motion and Ms Poole's motion have the same number, at the time each of the parties was preparing them, they were preparing them alone and bringing them to committee, and both of you chose to have a motion which dealt with an issue of a reason for a decrease in rent. So it was put in the area of the bill where those sorts of things occurred. I did both of them. It does not matter, because in both cases it was a section in between section 24 and section 25, where in my view, when I prepared these motions, it belonged.

**Mr Daigeler:** Could you explain that again?

1610

**Mrs Marland:** Thank you for that explanation on section 24.1.

**The Chair:** Would you like to move it, then, Mrs Marland?

Mrs Marland moves that the bill be amended by adding the following section:

"24.1 The tenant may base an application on a decrease in financing costs for the residential complex to the extent of the amount which was previously allowed in respect of that financing cost."

Would you like to speak to that, Mrs Marland?

**Mrs Marland:** This amendment corresponds with the one that passed.

**Mr Mammoliti:** No way.

**Mrs Marland:** Are any of the members still present who voted and got shot in the head when you went to your caucus office afterwards? If the government intends to allow our other amendment to stand, the one that we won through a democratic vote I might add, this amendment allows tenants the same benefit. Now I am sure you are going to want to allow tenants a benefit, so I am sure you are going to want to vote for this amendment.

**The Chair:** Further questions or comments on Mrs Marland's amendment to section 24.1? Shall Mrs Marland's amendment to section 24.1 carry?

**Mrs Marland:** I would have it recorded.

**The Chair:** We have a request for a recorded vote.

The committee divided on Mrs Marland's motion, which was negated on the following vote:

**Ayes—4**

Daigeler, Marland, Morin, Poole.

**Nays—6**

Abel, Harrington, Johnson, Mammoliti, Marchese, White.

Section 25:

**The Chair:** Section 25: questions, comments, explanations? This is a section as printed in the original bill.

**Ms Harrington:** Just a comment. Section 25 permits an application to be made for a reduction in rent on the basis that the standard of maintenance or repair of a rental unit or of the residential complex as a whole is inadequate.

**The Chair:** I see we have a Conservative amendment. Mrs Marland, would you like to place it?

**Mrs Marland:** Would you like me to move it now?

**The Chair:** Yes.

**Mrs Marland:** All right.

**The Chair:** Mrs Marland moves that section 25 of the bill be struck out and the following substituted:

"25 The tenant may base an application on whether there has been a deterioration in the standard of maintenance in their rental unit or the whole residential complex."

An explanation, Mrs Marland?

**Mrs Marland:** This amendment is an attempt to rectify the ambiguity of this legislation. This particular clause replaces the term "inadequate" with "deterioration in the standard of maintenance."

Would you not think that was much better? My friend Mr Mammoliti has talked a lot about the deterioration in the standard of maintenance in the buildings in his riding, so I am sure that he would rather have something that gave much more opportunity to those tenants than the innocuous word "inadequate." Here we probably have an example of another word in this legislation that, without some kind of definition or a better description, is meaningless.

Inadequate in the opinion of whom? Oh, yes, of course, the wizard, the rent officer. So the wizard is going to say the standard of maintenance or repair in the rental unit such-and-such is inadequate. Would you not rather it said "deterioration in the standard of maintenance"? It is a much broader description and certainly is a much stronger protection for all of our tenants. Dianne, are you running a lottery?

**Ms Poole:** First, to answer Mrs Marland's question, no, I am not running a lottery, but I am going to be able to feed my children for the week. Although it is most inappropriate for me to do this, I would like to thank all the people in the committee, all the members and staff who have supported my Walk for Alzheimer's on Saturday. You have all been very generous, and I thank you from the bottom of my heart.

**Mr White:** And we thank you for participating.

**Ms Poole:** Now I will send it down to Margaret so she can put on her \$5.



Mr Chair, I am sure you want me to move quickly back to section 25. The question I had was for Ms Parrish. When we discussed inadequate maintenance earlier in the week I thought it was with reference to inadequate maintenance that Ms Parrish stated that the ministry was trying to comprise some interpretative rules. Am I correct? Was that the right reference?

**Ms Parrish:** As I said before, we do not think it advisable to define this term because that will constrain the situation to which it could apply. But in the course of developing regulations and in consulting we are looking at the development of interpretative rules and we will consult on those before we finalize them.

**Ms Poole:** Am I to take it that there is no definite commitment to have a set of interpretative rules? There is only a commitment to consult with people as to whether there should be a set of interpretative rules or you are going to consult with people on what the interpretative rules should be?

**Ms Parrish:** What we intend to do at this time—and I should say that I obviously cannot commit the government; I can only explain the process that we are currently undertaking—is that at a staff level we are going to think up some interpretative rules that we think would make sense. Then we are going to put them out and ask people to comment on whether they think this is helpful or unhelpful, whether they think this is in the ballpark, if something should be added or deleted. We expect people will probably also respond on the basic question of whether there should be interpretative rules in this area and on whether we have hit on the right ones.

**Ms Poole:** But at least there will be an attempt by the government to draft a set of interpretative rules and take it for consultation?

**Ms Parrish:** I cannot commit the government. I can only say that is what we are currently doing.

**Ms Poole:** Well, I am glad to have that clarification because I was quite uncomfortable with the fact that in this legislation inadequate maintenance did not have any criteria attached to it. I am not going to go into the underground parking garage example, but it is a classic example of where one person might think inadequate maintenance had caused the problem, while expert testimony might prove something entirely different.

I think it would be very important and advisable for the ministry to have this set of interpretative rules—criteria is what I would call them—to guide the rent officers. It is just unfortunate that those interpretative rules are not in such a stage right now that our committee could take a look at them to have an idea of what the government is planning to do.

It makes it rather difficult for us to vote on Mrs Marland's motion at this particular point. We do not know what we are comparing it to. I do agree that Mrs Marland's motion is certainly an improvement over what was in the bill, but without interpretative rules it does put us in a bit of a quandary as to how we can vote for this when we do not have the full information before us.

1620

**Mr White:** I want to thank Mrs Marland for her effort to clarify the legislation, and I am sure that is a very genuine one. I would share Ms Poole's concerns as well, because with any legislation one has difficulty in terms of how is the legislation to be interpreted, which is typically in the fullness of time, as they say, and through regulations.

I certainly appreciate Mrs Marland's attempt to clarify the intent of it, but the clause as written is I think preferable to her suggestion. The issue of deterioration speaks of a comparison between what was and what is. One would then have to have historical data to compare what has happened in a building with what is presently happening in a building to determine if something which is presently a slum was always a slum. Thus, if we have always had a slum, there is no deterioration whatsoever in the standard of its maintenance. It strikes me, for example, that if one has a broken window or a refrigerator that is no longer functioning, if that was the quality of the maintenance and repair in the past, then there has been no deterioration.

I would suggest the issue is, what is the quality of the repair of the rental unit right now in situ, and is that adequate? How one defines "adequate" of course will be difficult, but I do not think that an historical comparison would be of much help. One would then have to determine not only whether the standards of maintenance and repair are adequate, but also what level of deterioration has occurred.

For those reasons I would have to vote against this recommendation, because unfortunately, rather than clarifying the matter, it introduces another variable which is even further and more difficult to define in regulation or in any other form.

**Ms Harrington:** I did want to point out basically what Mr White has pointed out, that is, when you change the wording concentrating on deterioration, you are talking about a comparison in time. You would have to have dates, times and places and it would be very difficult, I put forward to you, for the tenants to prove this.

What is imaging through my mind that I cannot stop is that this past noon hour Mr Mammoliti and I went to a building on Weston Road and Finch Avenue and I toured four units in that building.

**Mrs Marland:** Without me? You did not invite me.

**Mr Mammoliti:** I invited you. It is in Hansard.

**Ms Harrington:** It would certainly have been a pleasure. In fact, I thought of that I believe it was yesterday. I am sorry I did not invite you.

We saw an inadequate building. If I had to ask each one of those tenants, "When did each of these things occur?" whether it is the windows, the plaster on the walls coming off, the leakage, the cupboards coming out, all kinds of different things, I think that would certainly weaken this bill in many regards. I think that is why we have used the wording that we have.

**Mr Johnson:** I just want to make reference to the word "inadequate." I cannot agree with Mrs Marland's choice in change, but I know the word "inadequate" could become subjective as one tried to make interpretations about it. I know that in civil law and certainly in other



types of law, words in the English language are often referred to in dictionaries for their absolute definitions because they are very important. I am sure that words in legislation are very important as well.

I would think that if the word "substandard" were placed in place of "inadequate," it would have a better definition in so far as there are standards for things. There are standards for how electrical wiring is done, for example. If it was done less than the standard, then certainly it could be determined that it was substandard. But even in that it becomes vague as you deal with things that do not have standards, painting, for example. There are no standards for painting, absolutely, and there are no standards maybe for how plastering and other things are done. I think a compromise has been made here. Certainly, although there will be some subjective determination made with regard to the word "inadequate," I think we may have to live with that.

**Mr Marchese:** I just want to point out that Mrs Marland's focus is not so much on "deterioration" as it appears to be on "standard," because it is the deterioration of the standard in maintenance. The problem with that is that "standard" is not defined and you get into the equal problem of defining what "standard" is. For me the word "inadequate" is quite adequate.

I just want to agree with Ms Poole's point about interpretative guidelines. I think it is useful. At some point, all of us will be interested in seeing those guidelines as well.

**Mrs Marland:** You know the people who are going to be the most interested in seeing the guidelines are the wizards.

**Mr Johnson:** Who are these people?

**Mrs Marland:** I am really pleased that Mr Marchese and Mr Johnson are now on the record for their attendance and their participation in the committee this afternoon. Now we will have you in Hansard and we will know you were here, that you did not just waft in and out like the puppets on stage.

**The Chair:** Mrs Marland, to section 24.

**Mrs Marland:** Through you, Mr Chair, to Mr Johnson: Are you a lawyer, Paul?

**The Chair:** Mrs Marland, through the Chair.

**Mr Johnson:** No, but I have studied labour law at university.

**The Chair:** Mrs Marland, we would prefer that you address your comments through the Chair to the section you are attempting to amend.

**Mrs Marland:** I did say, "Through the Chair, are you a lawyer, Paul?"

**Mr White:** Mr Chair, the member is casting aspersions upon my colleague.

**Mr Mammoliti:** She has something against lawyers, I think.

**The Chair:** Order.

**Mrs Marland:** Mr Chairman, on my amendment, I am delighted to have Mr Johnson agree that the word "inadequate" is subjective, because that is what I have been saying

all along. I have been saying that the word "neglect" is subjective, and I think it is great that I now have a government member who agrees with me.

**The Chair:** Further questions or comments to Mrs Marland's motion to section 25? Shall Mrs Marland's amendment carry? All in favour? Opposed?

Motion negatived.

**The Chair:** Now we have a Liberal motion which will be adding a subsection, 25(2), to section 25.

**Mr White:** Mr Chair, on a note of procedure, I thought if we were adding a section that would come after a debate on the earlier section.

**The Chair:** I am told this adds a subsection, Mr White. I am however as confused as you about this, but I understand that because it is a subsection it is numbered 25(2) and that this is the appropriate place to deal with it. Now, if Ms Poole will amend it.

Ms Poole moves that section 25 of the bill be amended by adding the following subsection:

"(2) The rent officer shall not consider an application under this section if a similar application respecting the same rental unit has been made under any other act."

1630

**Ms Poole:** This is just actually a cautionary section to ensure that an application is not made for relief under several different acts. For instance, the Landlord and Tenant Act provides relief in certain circumstances. I think it is a very commonsense amendment. All it does is to say that you choose the act under which you want to go for relief and that you would not have two outstanding applications under two different pieces of legislation at the same time.

If you do allow relief under any act for the same problem, then what might happen is a situation of unfairness, where one party or the other is penalized doubly or even triply if one of the parties applies under several different acts. I am hoping that the government would accept this particular amendment. I am trying to remember who suggested it. I would like to take credit for this bright idea, but I think it was either the Landlord Self Help Centre or the Tenant Advocacy Group. I think it was the landlords' self-help group.

**Ms Harrington:** It is my understanding from the ministry's response here that the current wording of Bill 121 already provides that an order will not be made reducing rent where a similar order is made under the Landlord and Tenant Act. Any further clarification? I would ask Ms Parrish to comment.

**Ms Parrish:** Subsection 28(5) already provides that if there is an order under the Landlord and Tenant Act for an abatement of rent, compliance with that order would be an adequate remedy. I think that is the important part, that you cannot make another application here. The concern we have with this amendment, from a technical viewpoint, is that first of all there may be no relief at all granted in the situation. All you have is a situation where there may have been an application under the act, but there may have been no order granting relief. Second, the order granting the relief may not have been complete.



I guess the other thing is that we are not too sure what these other acts are. For example, if there was a municipal prosecution, would that be an application under another act? If so, it would probably deal with the issues, but it would not provide the tenant with any remedy for them. That is why we think the language in subsection 28(5) sort of nails down the whole issue a little harder. It refers to the only other act I am familiar with in which you could get the same remedy and it makes it clear that it has to be a remedy the tenant gets, as opposed to for example a prosecuting municipal authority or whatever. It is not really a disagreement with the policy concept; it is a preference for the more precise language of subsection 28(5).

**Mr Mammoliti:** I just want to touch a little bit on precedents and talk a little bit about rent review. As in the courts, when you are in front of rent review you sometimes argue precedents and past rulings. I believe and hope that with the word "inadequate" the precedents will change somewhat, and when they change I would hope the attitude would change. I talk a lot about attitude during these committee meetings because I really do believe that attitude changes with precedents. I thought I would throw that in there.

**Ms Poole:** I am glad Ms Parrish gave that explanation. I am also glad I did not take credit for thinking of this, since I cannot really justify beyond what I have. Under those circumstances, I think perhaps we may as well just go ahead and vote.

**The Chair:** Further questions and comments? Shall subsection 25(2), as moved by Ms Poole, carry? No? Okay. All in favour raise their hands. Opposed?

Motion negatived.

**The Chair:** Now we are dealing with section 25 as printed, I believe. We have had an explanation, as I recall. Further questions or comments? Shall section 25 carry?

Section 25 agreed to.

Section 26:

**Ms Harrington:** Section 26 permits an application to be made for a reduction in rent on the basis of discontinued or reduced services with respect to a rental unit or the residential complex as a whole.

**The Chair:** I think we are going to have to take a short time out for just a few moments. We have a Conservative amendment, or at least I have in my hand a Conservative amendment, and it would be wise to discuss it first before we discuss the section.

**Mr Mammoliti:** Where are they?

**Mr White:** Where are the Conservatives?

**Ms Poole:** Could we not simply stand this section down and continue the debate on another section?

**The Chair:** Do I have consent to stand down section 26? Agreed.

Section 27:

**Ms Harrington:** Section 27 of Bill 121 sets out the findings a rent officer can make on an application to reduce rent. In accordance with the regulations under the act, the rent officer must first decide if the issues raised on the

tenant's application are based on one or more of the following grounds, (1) an extraordinary reduction in operating costs for municipal taxes, hydro, water or heating, (2) inadequate maintenance or repair of the complex as a whole or of a rental unit in it or (3) reduced or discontinued services to the complex as a whole or a rental unit in it.

Having done so, the rent officer must then decide if the evidence provided supports that a reduction of the current rent charged or the maximum rent is justified, and if so, the amount by which the rent is to be reduced—a big job for the wizards.

**Ms Poole:** I would just like some clarification. I am looking at section 27 as I have in my reprinted version, and I do not see references to extraordinary operating costs or some of the things the parliamentary assistant referred to. Is that covered under the subsection (b) where it talks about a reduction of the rent charged? Is that just a generic title for it?

**Ms Parrish:** The earlier sections tell you what the grounds are and then this explains essentially how the rent officer makes findings. It is like section 20 that we went through before when the rent officers had to make all these findings about rent increases, and now they are making all these findings about rent decreases. These just happen to be the grounds. There are only three grounds for decreases.

**Ms Poole:** I would be pleased to support section 27 if the government were to make one minor amendment, and that is to add the word "written" before "findings." "The rent officer shall make written findings according to the prescribed rules for each rental unit." I think it is particularly important for tenants and for landlords trying to understand the rationale behind a rent officer's decision that they have an opportunity to review those findings in writing. I think this is something tenants have been asking for for some time and I am sure landlords would also appreciate that opportunity. I wonder if the ministry might consider that as a friendly amendment.

1640

**Ms Harrington:** Ms Parrish would like to respond.

**Ms Poole:** This is going to be a no.

**Ms Parrish:** This is going to be similar to the discussion we had about where you should put procedural rules. It is our preference to put the procedural rules in the procedural section, because we think that is easier for everybody to figure out. I should point out that in section 20, which deals with landlords, it does not say "written findings." Later on I believe there is a Liberal proposed amendment that deals with written reasons. I understand that our minister is quite sympathetic to that, and I will not speak any further because it is not appropriate, but I think the issue of written reasons and written findings would be more appropriately dealt with in the context of that amendment.

**Ms Poole:** Since the minister is not here, I would be willing to vote on this section, on the understanding that we would have that discussion about written findings and written reasons in the procedural section.

**The Chair:** Further questions or comments?



**Mr Marchese:** I am quite prepared to accept the word "written," because it makes sense. Whether it is here or somewhere else does not make any difference to me. Is there something else I am not understanding?

**Ms Parrish:** The problem is that you have a drafting inconsistency. If you say here that you have to have written reasons and the other section just says findings, then it suggests that you only have to have things in writing if it is for tenants and if it is for landlords you do not, because you have this inconsistency in the drafting. If what you want to say is that you want to have written reasons, it would be preferable to deal with that and say everybody should have written reasons, because otherwise you are going to create this inconsistency in all the other sections. Then people are going to say, "That must have been for some reason," and you are going to spend a lot of time explaining why this anomaly was occurring. This is not a policy objection, it is purely a technician's response.

**Mr Abel:** Could there be a blanket definition?

**Ms Parrish:** Later on there are sections that deal with written reasons and requiring written reasons.

**The Chair:** Did Mr Johnson indicate he had something?

**Mr Johnson:** I pass.

**The Chair:** Further questions and comments? Ms Poole?

**Ms Poole:** Just to say Ms Parrish's explanation is certainly reasonable and if the government plans to deal with it in the procedural section, it certainly would make it more consistent. I had not caught that on the earlier section relating to the landlord's application or I certainly would have made the same suggestion at that time, but I am quite content as long as we do deal with it somewhere in the legislation.

**The Chair:** Fine. Further questions and comments? Shall section 27 carry?

Section 27 agreed to.

**The Chair:** Do we have unanimous consent to stand down sections 28 and 29 for the same reason we stood down the previous section and move directly to section 30?

Agreed to.

Section 30:

**The Chair:** I will give the members and the Chair a moment to find that section. I believe this is a section as originally printed.

**Ms Harrington:** Subsections 30(1) and (2) allow a tenant to apply for a rebate of illegal or excess rents paid to the landlord. Specifically, subsection 30(1) states that tenants are not liable or responsible to pay illegal rents.

**The Chair:** Questions, comments or amendments to subsection 30(1)? Shall subsection 30(1) carry? Carried.

**Ms Harrington:** Subsection 30(2) allows a tenant to make an application to a chief rent officer for an order determining that the landlord has charged the tenant an illegal rent. An illegal rent is a rent in excess of what the landlord is permitted to charge, taking into consideration

all permissible rent increases and decreases under the Rent Control Act and previous rent legislation.

**Ms Poole:** The Liberal caucus will be supporting this section of the act.

**The Chair:** Further questions or comments? Shall subsection 30(2) carry? Carried.

**Ms Harrington:** Subsection 30(3) gives the rent officer the authority to make findings on whether the landlord has charged an illegal rent and in such cases to issue an order declaring (1) the maximum rent and its effective date, (2) the rent charged and its effective date if the landlord is charging less than the maximum rent and (3) the amount of excess rent owing that has been paid by the tenant to the landlord, provided that the amount does not exceed the monetary jurisdiction of the Small Claims Court, which for purposes of this act is \$5,000, or higher, if the Small Claims Court's jurisdiction is raised.

**The Chair:** Questions, comments or amendments? Shall subsection 30(3) carry? Carried.

**Ms Harrington:** Subsection 30(4) further provides that where the amount of excess rent paid is equal to or less than the monetary jurisdiction of the Small Claims Court, the landlord will be required to repay the tenant the amount of excess rent paid plus interest on that amount. The interest will be calculated in accordance with the regulations made under this act. This is a government amendment that provides consistency with clause 30(3)(c) that the monetary jurisdiction should be based on the debt owing.

**The Chair:** Questions, comments or amendments? Shall subsection 30(4), as printed, carry? Carried.

**Ms Harrington:** Subsections 30(5), (6) and (7) together provide a remedy to the tenant in situations where the amount of excess rent that has been paid by the tenant to the landlord is more than the monetary jurisdiction of the Small Claims Court. In such cases, subsection 30(5) says the tenant can do one of two things: (1) provide proper written notice to the rent officer abandoning the amount of excess rent paid that is above the monetary jurisdiction of the Small Claims Court and request that an order for repayment of illegal rent be made on the balance plus interest or (2) commence a proceeding in the courts for recovery of the full amount of illegal excess rent paid. This is a government amendment that provides consistency with clause 30(3)(c) that the monetary jurisdiction should be based on the debt owing.

**The Chair:** Questions or comments on subsections 30(5), (6) and (7)? Shall subsections 30(5), (6) and (7) carry? Carried.

Subsection 30(8): We have a government amendment as printed, I believe.

**Ms Harrington:** Yes. Subsection 30(8) provides a mechanism whereby the tenant is able to recover the illegal excess rent paid to the landlord if the tenant's current landlord is the same landlord named in the order. In such cases, the order may provide that the tenant may deduct from future rent payments a specified amount, which does include interest, for a specified period of time until the



tenant has recovered the entire amount of illegal excess rent paid. This is a government amendment that reflects the intention that an order may provide an illegal rent charged and interest related to it may be deducted from future rents.

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**The Chair:** Questions or comments?

**Ms Poole:** What this section says is that if a landlord has charged an illegal rent, and rent review has confirmed that it is an illegal rent, rent review can have an order saying the tenant can recover the amount by deducting it from his rent over a period of time. I think a number of tenants are concerned about this. They feel that if there is an illegal rent being charged, the remedy should be a lump sum repayment by the landlord, and in the event the landlord does not make that lump sum repayment, then in those instances a tenant has a secondary recourse, which is to deduct the amount from his rent.

I do not know whether the ministry has considered this particular vantage point. I would certainly not mind standing this down if they would like to take it back to the minister to discuss.

**Ms Harrington:** Yes, we would like to try and clarify that. I think it is in here somewhere. Could you respond?

**Ms Parrish:** I guess the normal order would be that it would be in a lump sum, and this gives discretion to provide it as a deduction. It seems to me that this is an issue on which you simply make representation at the time. All this says is that you may make an order providing for deduction, and since there is interest, the tenant does not lose out.

**Ms Poole:** This concerns me if it is an either/or scenario, because definitely from reading subsection 30(8) one would be led to believe that the recourse by the rent officer would be to have the amount deducted from the rents of a tenant over a period of time. I would be much more comfortable with this section if it did very clearly spell out that it would be a lump sum order but the rent officer does have the discretion to provide that it be over an extended period of time in special circumstances. In other words, it defaults to a lump sum unless there are special circumstances. But as I read subsection 30(8), I do not see the recourse of a lump sum amount at all; I do not see that a rent officer would take that type of direction.

**Ms Parrish:** I guess this is something over which lawyers can dispute, but the way I read this is that it says in subsection 30(4) that if the amount of excess rent owing is this and that and the other thing, the rent officer shall order them to pay it. So there it is; there is the order. Then it says you may provide that the tenant may recover this through this other mechanism. So then you have to say under what circumstances you would do this.

It seems to me the first one says, "You shall order it," so you have to order it, whereas later on it says, "However, you may do this in subsection 30(8)." It seems the basic rule is in subsection 30(4): You must do this. The other rule is in subsection 30(8): You may do this other thing.

I guess the question that arises is, when would you do subsection 30(8), as opposed to a lump sum? In any event, you have to provide the interest, and the interest would be calculated according to regulations in order to ensure that you do not sort of lose out in these deduction situations. I assume it is because there has been some sort of evidence given around hardship or something else that would cause you to exercise this discretion.

I am not sure I agree that there is any other way of explaining this. I think it is fairly clear that subsection 30(4) says you must do this and subsection 30(8) says you may do this other thing as well, depending on the evidence before you.

**Ms Poole:** I have been advised that this wording is very similar to what was under the Residential Rent Regulation Act. Under the RRRA it was virtually always interpreted to be the latter situation, ie, that the tenant would have to recuperate the amount from the rent over an extended period of time. It concerns me, because I see in subsection 30(4) that "the rent officer shall...order the landlord to pay the excess rent owing," and then I see in subsection 30(8) that "the order may provide," which seems to me to be contrary.

If you are saying in one that it shall be a lump sum and in the other you are saying you could do it another way—you can do it, not that you shall—would the ministry consider taking a look at this particular subsection before we next meet and thinking about whether there is an alternative way to word this to make it clear that the default position is that it would be a lump sum payment, and if there are extenuating circumstances, then the rent officer has the discretion to provide that it can be paid over an extended period of time?

**Ms Harrington:** I understand your concern. It sounds reasonable that we would examine it, and if it is a holdover from the RRRA, then certainly we should check that out.

**Ms Poole:** Certainly you should change it, right?

**Ms Parrish:** I just would draw a distinction, though, between practice and what the law says. I only add that caution, because I am not too sure how we are going to be able to describe in statutory language what these extenuating circumstances are. That is why you have discretion.

We certainly are willing to look at it again. It is not that this has not been raised with us before, and it is not that we have not listened. I am just drawing the attention of the committee to the distinction between administrative practice and what the statute actually says. But we are certainly willing to look at it again.

**Ms Poole:** Mr Chair, I would most appreciate it if we could stand down this section. It concerns me any time practice does not correspond to what the law actually says, and I would really like this to be cleared up before we vote on it.

**The Chair:** Are you asking that the section be stood down?

**Ms Poole:** To be stood down.



**The Chair:** Do I have agreement that this subsection should be stood down? We have unanimous consent.

**Mr Marchese:** Mr Chair, my point is to express sympathy for the view Ms Poole was communicating and to direct the staff to look at wording that accommodates the intent of her comments.

**Mr White:** We in fact are all sympathetic to Ms Poole.

**Ms Poole:** This is like a love-in, Mr Chair.

**The Chair:** With that, I think we had better adjourn until Monday at 2 pm.

The committee adjourned at 1659.

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Winninger, David (London South/-Sud ND)

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Gigantes, Evelyn, (Ottawa Centre ND) for Mr Marchese

Gigantes, Evelyn, (Ottawa Centre ND) for Mr Mammoliti

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First Intersession, 35th Parliament

## Official Report of Debates (Hansard)

Monday 27 January 1992

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Rent Control Act, 1991

## Assemblée législative de l'Ontario

Première intersession, 35<sup>e</sup> législature

## Journal des débats (Hansard)

Le lundi 27 janvier 1992

### Comité permanent des affaires gouvernementales

Loi de 1991 sur le contrôle  
des loyers

Chair: Michael A. Brown  
Clerk: Deborah Deller

Président : Michael A. Brown  
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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON GENERAL GOVERNMENT

Monday 27 January 1992

The committee met at 1412 in committee room 1.

### RENT CONTROL ACT, 1991

#### LOI DE 1991 SUR LE CONTRÔLE DES LOYERS

Resuming consideration of Bill 121, An Act to revise the Law related to Residential Rent Regulation / Projet de loi 121, Loi révisant les lois relatives à la réglementation des loyers d'habitation.

**The Chair:** The committee is reviewing Bill 121 clause by clause. At the completion of Thursday, I believe we had just finished standing down subsection 30(8). Mr Mammoliti?

**Mr Mammoliti:** I will not take up much time, but I think it is important that we note a letter which has been sent to you, Mr Chair. It is important for me to point out just a couple of things this individual states in the letter. Would that be possible at this time?

**The Chair:** Before you start, I would point out that this letter is addressed to me and that all members of the committee have just received a copy of it.

**Mr Mammoliti:** Right. There is no point in my reading the letter. Everybody has a copy. I would appreciate their reading it when they have a spare moment, but I do want to stress a couple of key points that this individual has mentioned in his letter.

Let me start by saying that the person's name is Frank Haines. I believe a lot of us are familiar with Mr Haines. He is a tenant advocate in the city and he has done a marvellous job organizing tenants and representing them.

Mr Haines starts off by talking about some of the political grandstanding that has been going on with the committee and how he wishes this would stop. Frankly, I agree with him on that. We have only another four days in this committee and I would like to see as much work accomplished as possible. I thought I would mention that as well.

He talks a little about how Bill 51 affected the tenants and how we cannot salvage all the harm Bill 51 has done overnight. I cannot agree with him more. He also talks about this bill not being 100 per cent. When he talks about 100 per cent, he talks about it being a perfect bill and how no bills have ever been perfect. He believes this bill is a good one and that tenants across the province are waiting for it. Then he talks again about the political grandstanding and how he believes it should stop.

I will leave it at that. I am hoping the members of the committee will read the letter, because I think it is an important one, in order for us to finish our business by the end of the week.

**Mr Jackson:** I have read the letter and I want to thank Mr Mammoliti for bringing it forward. However, perception is an unusual thing. I received a phone call from one of the tenants in my riding Friday, when I was having my

regular constituency day, who felt that the delay in the legislation was a clever tactic because it was enabling the NDP to re-examine the caps. They would then be in a position to provide even more equity and fairness for tenants.

It is an unusual commentary that tenants somehow felt that delaying the legislation would give the government a window further on in the session from which it could see that its caps were too high and were not helping tenants. That was just a perception of a tenant in my riding which quite fascinated me, so this is one point of view. Certainly there will be others and, as always, they are in the eye of the beholder.

Section 30:

**The Chair:** We shall then move on to subsection 30(9). Questions, comments or amendments?

**Ms Harrington:** Mr Chair, because it is related to subsection 30(8), we wish to stand this subsection down.

**The Chair:** Can I have unanimous consent to stand down this subsection?

Agreed to.

**The Chair:** Subsection 30(10).

**Ms Harrington:** Subsection 30(10) specifies the rate of interest that will apply to the amount of illegal rent, excess rent, owing. Specifically, the rate of interest is the post-judgement interest rate published under the Courts of Justice Act, 1984. This rate is calculated on a quarterly basis and published in the Ontario Gazette. The Courts of Justice Act, 1984, indicates that the post-judgement interest rate is the rate established by the Bank of Canada for short-term advances to chartered banks, rounded to the next higher whole number, plus 1%. The regulations under the Rent Control Act will set out the calculations and periods to use when applying the interest rate.

**The Chair:** Thank you. Questions or comments? Shall subsection 30(10) carry? Carried.

Subsection 30(11).

**Ms Harrington:** Subsection 30(11) establishes the \$5,000 monetary jurisdiction of the Rent Control Act. Currently, outside Metropolitan Toronto, the monetary jurisdiction of the Small Claims Court is less than \$5,000. Subsection 30(11) specifically provides, for the purposes of the Rent Control Act, that the monetary jurisdiction is at least \$5,000. This amount refers to the amount of illegal excess rent paid by and owing to the tenant and does not include the amount of interest that may be applicable on that amount. Therefore, an order made under this section or sections 28 and 32 could order the landlord to repay to the tenant a total amount owing that exceeds \$5,000, for example, \$5,500, provided that the illegal excess rent owing does not exceed the \$5,000 ceiling.

**The Chair:** Questions or comments?

**Ms Poole:** Briefly, Mr Chair, I had a question for the parliamentary assistant or perhaps Ms Parrish. Here we have referred to the monetary jurisdiction of the Small Claims Court as \$5,000. I believe it was relatively recently that they raised the jurisdiction to that amount. Would there be any problem if the Small Claims Court changed its monetary jurisdiction to a larger amount in future? Would that make our legislation in contravention of it or create any difficulties?

**Ms Harrington:** Ms Parrish, could you please respond?

**Ms Parrish:** No, all this section says is that our jurisdiction is the same as the Small Claims Court jurisdiction, but in areas where it is still \$3,000—there are still those areas—we say that our jurisdiction is \$5,000. It has been \$5,000 for quite a while in Toronto, but not elsewhere. There is another section, I think, that says it is the Small Claims Court jurisdiction.

**Ms Poole:** That is all right. That certainly answers it. In your opinion, if the Small Claims Court changes the ceiling in future, that will not have an impact.

**Ms Parrish:** No, the ceiling would just rise. If you look at the earlier sections, subsection 30(4), subsection 30(5) and so on, they refer to the monetary jurisdiction of the Small Claims Court. Then later on you say, "What is the monetary jurisdiction of the Small Claims Court?" It is whatever is established under that statute. But if it is less than \$5,000, we just say it is \$5,000 so that we do not have a situation where our jurisdiction in Toronto is \$5,000 and our jurisdiction in Thunder Bay is \$3,000.

1420

**Mr Jackson:** In plain English, a jurisdiction that had a ceiling of \$3,000 now has a ceiling of \$5,000 for matters relevant to a tenant rebate.

**Ms Parrish:** Or that a landlord would get as well under this statute.

**Mr Jackson:** That was going to be my next question. I did not quite catch it because I do not have the section in front of me. Does it apply the other way for damage to an apartment where the landlord is going to Small Claims Court?

**Ms Parrish:** That would be under the Landlord and Tenant Act, so it would be the jurisdiction of the act.

**Mr Jackson:** No. You are talking about the cap. In other words, the judge would not accept it in Small Claims Court but he would be required under this legislation to receive a claim in Small Claims Court that is greater than the court cap. That is what I understand this section to mean.

**Ms Parrish:** There is only one way you would get into the Small Claims Court under this statute and that would be if you registered your judgement and tried to enforce it. What you have essentially is a mechanism to enforce your judgement. The debt, however, is created under this statute. The only way you could get into Small Claims Court would be if you were taking a judgement that you could not enforce and registering it in the Small Claims Court.

**Mr Jackson:** Correct. For our purposes, that can be now a maximum of \$5,000 even in a jurisdiction where it is \$3,000.

**Ms Parrish:** Yes.

**Mr Jackson:** Where there is a debt to a landlord, whether it is arrears or damage, and there is a judgement—I see, because the judgement cannot be any greater than \$3,000.

**Ms Parrish:** Because the judgement would have been received under the Landlord and Tenant Act and not under this act.

**Mr Jackson:** But they will not receive amounts greater than \$3,000 in a Small Claims Court, regardless of the Landlord and Tenant Act.

**Ms Parrish:** They will enforce the judgement; they just will not give the judgement. Under the Landlord and Tenant Act they will be bound by whatever the jurisdiction is in that court.

**Mr Jackson:** That is my point. You are modifying a threshold on one set of circumstances to the credit of the tenant, but you are not making a coequal concession to landlords on the same basis.

**Ms Parrish:** In any system in which an obligation is created, under this statute both landlords and tenants are treated equally. Where you have an obligation created under another statute, the Landlord and Tenant Act, then we are bound by the laws that affect the Landlord and Tenant Act, both landlords and tenants. If a tenant, for example, were applying for a section 96 rebate in a jurisdiction in which the \$3,000 was the limit, that is all he would be able to get. The jurisdiction is not flowing from whether you are a landlord or a tenant; the jurisdiction is flowing from what statute you are exercising your rights under.

**Mr Jackson:** To be direct, I am not sure I understand you clearly or whether you understand the nature of my question. I understand how Small Claims Court works: Regardless of what statute you apply, there is a limit. An amount greater than that can go elsewhere.

**Ms Parrish:** That is right.

**Mr Jackson:** The purpose of this clause is, where there is a judgement, a tenant can then go to the Small Claims Court for an amount greater than the cap in that jurisdiction. That is what I have listened carefully to hear you say. In jurisdictions where there is not a cap, they are all deemed to be basically \$5,000 limits.

**Ms Parrish:** I may have not explained myself very clearly. What these provisions say is that it is possible that indeed when you calculate the amount of rent owing it is more than \$5,000. If that occurs, there is nothing we can do. We can only go to \$5,000, and that is our jurisdiction across the province. It would make no difference where we were.

**Mr Jackson:** That is not the case in Ontario. We have different thresholds for different amounts.

**Ms Parrish:** Under some statutes. Under other statutes, we have a uniform jurisdiction.



**Mr Jackson:** Under this statute it is not uniform.

**Ms Parrish:** Under this statute it is \$5,000.

**Mr Jackson:** Regardless of where it is?

**Ms Parrish:** Regardless of where it is and regardless of who it is.

**Mr Jackson:** All right then, to make sense of all this my question should have been, is the regulation under the Landlord and Tenant Act uniform across the province as it relates to arrears and damages claimed by a landlord?

**Ms Parrish:** No. To my knowledge it is based on the Small Claims Court jurisdiction, but I can inquire into that and find out for you. It is possible that I could be wrong about that, and I will look into it.

**Mr Jackson:** I would like to stand this one down briefly. I do not want to dwell on it, I would like to move on, but I would like that information. My concern is that we are not being equitable in the sense that where there are arrears and damages, this becomes an expense to the entire building, and when moneys go to recoup that or to write off those losses, there is that much less to go into the building. Those tenants who wilfully damage property or who leave with excessive arrears do affect certain fiscal outcomes in a building which do not work to the best interests of the remaining tenants.

A landlord's legitimate right of recovery should be equivalent, in my view. If we could get that information, then perhaps we can recommend that certain provisions of the Landlord and Tenant Act be examined so that the tenants are treated the same across the province, which is the spirit and intent of the government's motion in this case.

**Ms Harrington:** That act is under a different ministry.

**Mr Jackson:** I realize that.

**Ms Harrington:** We are free to recommend, but we have to deal with this legislation.

**Mr Jackson:** I understand that. I would support it, but if it is not the case in the Landlord and Tenant Act, then I may not support it, because I do not think we should be equitable on one side of the equation and discriminatory on the other. That would be the basis for my vote. I do not want to dwell on it. I simply would like the information that would help guide me in that regard. That is all I want to say.

**Ms Parrish:** On a point of clarification, I have just had an opportunity to speak to one of our lawyers who has more experience with the Landlord and Tenant Act than I do and he says that the jurisdiction is \$25,000, because the application is to the Ontario Court (General Division), what used to be the old county court and is now the new system. He says the jurisdiction is \$25,000 there, higher than ours. I do not know if that is of some assistance to you.

**Mr Jackson:** This is for a claim by a landlord?

**Ms Parrish:** Yes, or a tenant for that matter, under the Landlord and Tenant Act.

**Mr Jackson:** I understand the cases for tenants, but the ones from landlords, I understood, were routinely going to small claims.

**Ms Parrish:** That is only because the landlord may have chosen to abandon the upper limit on his claim because he wanted to move more quickly. He is not forced to do that; he simply chooses that remedy because he thinks that maybe it is not worth the aggravation for the additional couple of hundred dollars or whatever, and he can take the case himself. He is not prevented from recovering up to \$25,000.

1430

**Mr Winninger:** It is an interesting issue and I thought I might be able to help shed some light on it. In London, by the way, the monetary jurisdiction for our Small Claims Court is only \$1,000. It was \$3,000 in Toronto and I gather it has been increased to \$5,000. If a tenant had already moved out, a lawyer or a landlord might take a claim to Small Claims Court to recover rent arrears, but if it was over the \$1,000 jurisdiction in Toronto, for example, he would have to abandon the excess.

Here we have a situation where there has already been an order for excess rent owing and you are looking for a court to enforce it in. All this says is that if your claim is within the limit of the Small Claims Court in your jurisdiction, you agree that you will recover up to the monetary jurisdiction there and you may have to abandon the excess rent. If you go to Small Claims Court in London, you would be looking for \$1,000. If you go in Toronto, you would be looking for \$5,000. But I notice that subsection 5(b) says that you can also commence a proceeding in any court of competent jurisdiction for the full amount, so you would be going to the next level, which would be the Ontario Court (General Division).

That is where you are representing a tenant, but if you are representing the landlord, typically, unless the tenant has already moved out and the Landlord and Tenant Act no longer applies, if the tenant is still there, then you have to go to Ontario Court (General Division) to get your order terminating the lease for arrears and compensation and whatever else, so the monetary jurisdiction limit there would not really apply for landlords because now it is up to, I believe, \$50,000.

**Ms Parrish:** Elizabeth Baldwin also pointed out to me that the jurisdiction of the Supreme Court and the Ontario Court (General Division) is now merged so you can go for as much as you want. When landlords or tenants have to look at debt enforcement, they have to decide whether they are willing to incur the greater cost of going to a court where it would be difficult to proceed without a lawyer, or whatever.

**Mr Winninger:** My only point was the landlord and tenant will likely be in different courts to start with. The landlord would not be subject to the same limit that the tenant would when he or she wants to recover rent. I gather that subsection 11 just says, if we are talking about monetary jurisdiction, it will be deemed to be a reference to \$5,000, but in London, for example, the monetary jurisdiction would be only \$1,000. I do not think this can by itself change the monetary limits under the Courts of Justice Act.

**Ms Parrish:** It only changes what we can order, not what they can enforce.



**Mr Jackson:** That makes sense, thank you.

**The Chair:** Shall subsection 30(11) carry? Carried. Subsection 30(12).

**Ms Harrington:** Subsection 30(12) limits the amount that can be rebated to illegal excess rent paid to the amount paid within six years prior to the filing date of an application made under this section. This provision is consistent with the calculation of tenant rebates under the Residential Rent Regulation Act.

**The Chair:** Shall subsection 30(12) carry? Carried.

We have a government amendment to subsection 30(13) as printed, I believe?

**Ms Harrington:** As printed, yes. Subsection 30(13), as amended, provides that a person who is currently not a tenant can make an application if that person was a tenant when the conduct giving rise to the application occurred. This is a government amendment that clarifies the policy intention of who can make an application.

**Ms Poole:** Subsection 30(13) in the amendment put forward by the government uses the words, "a person who is not a tenant." We brought this up in another section where we thought it might be clearer if we used the words, "a person who is no longer a tenant." It is not that it is incorrect in its current form, but I think it would certainly be much clearer if we did make that minor amendment. I wonder if the government members or the parliamentary assistant would be willing to entertain changing "not" to "no longer."

**Ms Harrington:** Let me just confer for a moment. I am advised that we have already passed a similar type of wording and that if we changed it now we would have to review the whole statute and look at the wording again. We would like to pass it as it is and assure you that we will look at this particular wording throughout the act and if it can be improved, do it in clause-by-clause in committee of the whole House.

**Ms Poole:** Even if you wanted to do it before we finish committee clause-by-clause and reopened it, we would certainly be happy to agree to that.

**Ms Harrington:** Okay.

**Ms Poole:** I do not think it is wrong, but it is much clearer.

**Ms Parrish:** There is nothing problematic about your amendment. I am just concerned that if we do it once we had better do it throughout. Otherwise people will assume we must have meant something else. So we want to do it consistently.

**Mrs Marland:** I first brought this point up under subsection 23(5). I raised the question of this wording. Subsection 23(5) is: "A person who is not a tenant may make an application under this section as a tenant based on a discontinuance or reduction in services and facilities if the person was a tenant and was affected by the discontinuance or reduction of the services and facilities."

In the discussion around this question, when I raised it last week, I started off thinking that if we let the wording stand, it almost suggests an agent of that tenant may act. That brings us into another question when we are dealing

with subsection 30(13). Is it possible under this act to have an agent act in an application on behalf of the tenant, or is it the tenant solely who must seek recourse through any of the sections in this bill?

**Ms Parrish:** Yes, of course, the tenant can be represented by an agent. That person may be an agent or a lawyer acting on that person's behalf. It is still the tenant who is the applicant and who is asking for the relief. It is still the tenant who has to have been the tenant at the time the conduct, ie, the illegal rent, occurred. The only reason we are asking for some time to stand this down is that if you say, "A person who is no longer a tenant may make application under this section," it almost sounds as if he is no longer a tenant anywhere. You probably need something like, "He is no longer a tenant in this complex," or something like that. What happens to the tenant who has just moved to another unit in the same complex? The reason I am asking for a little grace on this is that I think we can improve the drafting to make it clear what the intention is, including this confusion about who can apply. It is not as easy a fix as you might think at first blush, that is all, but the section clearly says the applicant who wants this relief, this money paid back, must have been the tenant at the time the illegal rent was collected, or whatever.

**Ms Poole:** I do not want to prolong this, particularly since the parliamentary assistant and ministry staff are going to take a look at it, but you might even want to consider a person who is no longer a tenant in that unit, or in the unit, because I think earlier in the legislation we were defining complex and unit. That may make clearer that you are just talking about a specific unit, a specific former tenant. That is just a suggestion to look at.

**The Chair:** Further questions, comments? Shall subsection 30(13) carry? All in favour?

**Mr Abel:** Five minutes.

**The Chair:** Twenty minutes.

Interjections.

**The Chair:** Can we do five? Twenty minutes; that means we will call the question one minute after three.

The committee recessed at 1442.

1502

**The Chair:** Members will take their seats. I understand that during the recess we have had unanimous consent on an amendment to change this section. In that case, I do not think we will take the vote. The parliamentary assistant.

**Ms Harrington:** I do not have a copy of the amendment.

**The Chair:** No, just withdraw this one.

**Ms Harrington:** Okay. Mr Chair, I wish to withdraw the government amendment as reprinted in the bill, subsection 30(13), and place an alternative amendment.

**The Chair:** Which, at the mercy of the photocopier, will be here very shortly.

**Mr Jackson:** In at least 20 minutes.

**Ms Harrington:** And then we will have a drink of water.

**Ms Poole:** Mr Chair, while we are waiting for the photocopy—



**The Chair:** It is now here.

**Ms Poole:** Oh, thank you.

**The Chair:** Ms Harrington will read the amendment into the record.

Ms Harrington moves that subsection 30(13) of the bill, as reprinted to show the amendments proposed by the minister, be struck out and the following substituted:

“(13) A person may make an application under this section as a tenant of a rental unit if the person was a tenant of that rental unit at the time the conduct giving rise to the application occurred even if the person is no longer a tenant of that rental unit at the time of the application.”

I should point out to members that it will also be necessary to get unanimous consent to revert to subsection 23(5) so that we can reopen that section and make the same wording change. We will not do that right at this moment because we do not have that amendment, but I will be asking that after we pass this amendment, if I could be so presumptuous to believe that it is going to pass. Mrs Marland.

**Mrs Marland:** Mr Chairman, there is an expression, something about “A rose by any other name” I am happy to support the rewording of subsection 30(13), as I raised it under subsection 23(5). I certainly would be in agreement with us reverting to subsection 23(5) if that is the first place that similar wording occurred in the legislation. It makes excellent sense, and I appreciate the drafting of the legislative counsel to facilitate this change, which is obviously a great improvement and means more clarity in the bill. So we do support it.

**Ms Poole:** She likes it.

**The Chair:** Thank you, Mrs Marland. Further questions or comments? Shall subsection 30(13), as amended, carry? Carried.

I guess we should ask for unanimous consent to reopen subsection 23(5) in the future, at the appropriate time.

Agreed to.

**The Chair:** Subsection 30(14).

**Ms Harrington:** Subsection 30(14) provides that both past and present subtenants can also make an application for payment of illegal rent, provided that the subtenant was the person who paid the illegal excess rent to the tenant. In these cases, section 30, payment of illegal rent, will apply as if the subtenant was the tenant and the tenant was the landlord.

**The Chair:** Questions, comments regarding subsection 30(14)? Shall subsection 30(14) carry? Carried.

As members will note, we have stood down two sections, subsections 30(8) and 30(9), which we will return to when there is agreement among the parties.

Section 31:

**The Chair:** Subsection 31(1).

**Ms Harrington:** Subsections 31(1) and 31(2) prohibit any landlord or any landlord's agent, including a superintendent, property manager or other person acting on behalf of the landlord, from collecting or attempting to collect any payment other than the lawful rent as a condition for leasing the rental unit. This is commonly known as key money. In addition, neither the landlord nor his or her

agent, including a superintendent, property manager or other person acting on behalf of the landlord, may charge a rent for part of a rental unit that when added to all the other rents payable for the remaining parts of a rental unit, results in a total rent being higher than the maximum rent for the whole unit.

**The Chair:** Questions, comments or amendments to subsection 31(1)? Shall subsection 31(1) carry? Carried.

**Ms Harrington:** Subsection 31(2) is a government amendment that clarifies the concerns raised by tenants in submissions for Bill 121 when superintendents or property managers collect key money without the knowledge of the landlord.

**The Chair:** Questions, comments, further amendments to subsection 31(2)?

**Mrs Marland:** Has the intent of these two subsections never been addressed before in legislation?

**Ms Harrington:** Yes it has been addressed before in legislation.

**Mrs Marland:** Which bills?

**Ms Parrish:** Section 31 is very similar to what is in the RRRA and section 32 is quite similar too, except that in the RRRA it simply says that the superintendent or manager, in order to commit a key money offence, must be collecting the money on behalf of the landlord. In many cases, the landlord has no idea the superintendent is asking for extra money and is quite shocked and horrified to find out that happened. This really just clarifies the current law, brings it forward and clarifies this one area where there have been actual cases in which superintendents did this off their own bat and not with the landlord's approval. But these provisions are quite similar to what is in the current statute.

**The Chair:** Further questions, comments on subsection 31(2), the government amendment as printed? Shall subsection 31(2), as printed, carry. Carried.

Subsection 31(3).

1510

**Ms Harrington:** Subsection 31(3) provides similar restriction to tenants as in subsections 31(1) and (2), prohibiting the collection of extra charges, that is key money, as a condition of renting. No tenant may sublet for a higher rent than that legally charged by the landlord. This means tenants may not increase the rent in a sublet. In cases where the maximum rent is higher than the actual rent charged, the tenant is still restricted to subletting at the same amount as charged by the landlord.

Tenants are also subject to the same restrictions as landlords in charging rent for part of the rental unit. The total rent charged for all parts of a rental unit cannot be more than the rent lawfully charged by the landlord. An example of this is where a person rents a house and turns it into a rooming house. The total rent paid by the roomers can be no greater than the total rent paid to the landlord. In addition, tenants may not charge key money or other payment as a condition for the sublet.

**Mrs Marland:** In the case of subletting, what intervention or control does the legislation provide to protect



future tenants, because is not subletting often done without the owner of the property knowing about it?

**Ms Harrington:** You are asking what protection there is.

**Mrs Marland:** Does the property owner always know when somebody is subletting from the lease he has with the tenant? Or, as we learned last week, they do not necessarily even have leases any more. What written protection is there? If you do not have written leases, how do you know who is subletting? Is it simply by the name on the cheque? How do you know there is not a side deal going on if the same person continues to pay the rent, but is in fact receiving money from somebody else in that unit?

**Ms Harrington:** That is a good question.

**Ms Parrish:** If there is no lease, it may very well be that the landlord does not know who has been sublet into the apartment. A lot of leases require that if you do have a lease, you notify, and even that there must be approval, although it goes on to say that you cannot unreasonably withhold that approval and you cannot charge an unreasonable amount of money to agree. However, these provisions do say that if the tenant is charging the subtenant key money, you can charge the tenant and you can deal with the tenant. The landlord may be completely blameless in that situation. It may be the head tenant, or whatever you want to call that person, who would be charged, not the landlord, because the landlord did nothing wrong. In fact, I know there have been instances where we have prosecuted tenants who have attempted to take advantage of subtenants in this way for charging key money.

**Mrs Marland:** Where does it say here that the tenants may be charged?

**Ms Parrish:** These provisions say that no tenant and no person acting on behalf of a tenant shall do these things.

**Ms Harrington:** That is a prohibitive statement.

**Ms Parrish:** That is what we would call in the jargon a charging section. Later on in the act, where we have set out what the offences are under the act, we say that anybody who does anything contrary to this section has committed an offence.

**Mrs Marland:** I am sorry, we are in section 31.

**Ms Parrish:** Yes, subsection 31(3).

**Mrs Marland:** Subsection 31(1) says, "No landlord shall, directly or indirectly, in respect of any rental unit," that goes through clauses (a), (b) and (c), which are involving the same things.

**Ms Parrish:** Subsection 31(3) says "No tenant...."

**Mrs Marland:** Okay, so we have looked after landlords, superintendents, property managers and we are now looking after tenants.

**Ms Parrish:** Tenants and persons acting on behalf of tenants. Then if you look at page 70 of your reprinted bill, in your offence provisions, section 124, it talks about contravening these sections. Clause 124(1)(d) on page 71 talks about contravening section 31. So anybody, landlords, tenants, superintendents, whoever did the thing.

**Mrs Marland:** But actually, Ms Parrish, last week I do not know whether you said the majority of occupancies were without leases, but you said a very high number of occupancies now did not have written contractual agreements any more.

**Ms Parrish:** I do not really know what the majority of people do. I do know at one time tenants had a tremendous incentive to have a lease because then they would be assured their rents would not increase during the period of the lease and that they would receive notice. Now those protections are provided statutorily so there is often less of an incentive to nail all of this down with a lease. We do not require people to have leases.

**Mrs Marland:** I come back to the point that in the absence of leases we will not know if any of this is going on. Even with leases a lot of people were not aware of subletting and these other things. In the absence of leases, how are you ever going to get a handle to protect those tenants who could be vulnerable to "subletting at a higher rent"?

**Ms Parrish:** I think your point is well taken. There is always a proof problem, and a lease is a handy method of proof. We also have registration of the unit, so in many cases, the unit will be registered.

**Mrs Marland:** Yes, but today less than 50% of the units are registered, from the figures we got, are they not? I am talking about 50% of the units in the province, the majority of which do not have leases. This legislation is certainly not giving any protection to those future tenants under subleases of non-existing leases. It is a lot of nonsense, is it not?

**Ms Parrish:** These people have a lease of course. They just do not have a written lease. In many cases they will have a registered rent. Certainly in the larger buildings about 96% or 98% are registered. In the case of smaller buildings it is like any other piece of evidence.

Certainly if I were subletting from someone and there was no lease or he or she was not willing to show me a lease, I would ask the landlord what the rent was in order to protect myself against paying more in the form of key money. That is the most likely situation in which we find out about this. The landlord tells the subtenants they are paying more rent than they should be. This does occur often when people move in.

It is like everything else. We are moving to improve our registration over time. As units come in for above-guideline rent increases we register them, and that approach is increasing the knowledge of what the legal rents are. But tenants have other avenues of request. They can ask other tenants in the building. They can ask the landlord, if they are subletting, and they can find out this information.

1520

**Mrs Marland:** It sounds very simple, but if you are desperate to get an apartment there is no way you are going to speak to the landlord. You are just going to deal with the person who has advertised the apartment who might even pretend that he or she is the landlord. The general public is not going to be aware of what the law is anyway no matter how much advertising we do.



I think it is fine to pass all these sections we are dealing with right now, but I do not see that the enforcement of them is going to be very easy. These sections are going to be there when something is brought before the authorities, but all the other stuff that is going on under the table all the time will not be remedied, because nobody is going to start phoning around to find out who the landlord is if there is a chance to sublet a place. With the shortage of rental accommodation, they are just going to jump in and sublet it and pay whatever they are asked to pay if it is what they want. I cannot see them trying to find out what the legal rent is, because at that point the landlord may say: "Aha. My tenant is not going to lease this to you. It's my contract with the tenant and I'm not going to allow a sublet."

Sometimes rattling the sabres may leave somebody out in the cold. I think that is a fact of life. I do not think you have a remedy in here to address that concern of the whole subject of subletting.

**The Chair:** Further questions or comments on subsection 31(3)?

**Ms Poole:** Right now we are dealing with subsection 31(3)?

**The Chair:** Yes, including an amendment in there, as printed.

**Ms Poole:** I apologize. I was out of the room for a moment so I was not here at the beginning of the discussion. Mrs Marland's objection is that she does not feel the remedy provided is sufficient?

**Ms Parrish:** I would not want to speak for Mrs Marland, but the impression I have is that her concern is that there are always market inequities and in some cases people are vulnerable in the marketplace and therefore, in order to get a place to live, they may end up paying what they should not pay because they are vulnerable or desperate or have not been educated as to their rights.

To some extent I think she is right. That always occurs. There are also tenants who are well able to protect their interests. It is hard for me to answer the question. I think you need to have these provisions, because if you do not have these provisions, people cannot exercise their rights.

There is a further question as to what we can do to empower people, either through education or other assistance, to exercise those rights and know what those rights are. There are a number of answers for that, some of which are in this bill and some of which are in other places.

**Ms Poole:** Certainly from my perusal of subsection 31(3), I think this section goes a long way in specifying exactly under what conditions a tenant can charge a certain rent for subletting. Key money is obviously a problem, not only from the vantage point of a landlord or a superintendent trying to charge the key money but also of tenants themselves. It is actually much easier to police if it is a superintendent. There is much more of a chance they will be caught.

I think you are quite right, Ms Parrish, when you say it is extremely difficult to legislate enough protection for people who are not aware of their rights. I think this is probably as far as we can go without infringing on other people's rights. This quite clearly sets out that tenants,

superintendents, property managers, landlords or any person may not charge a rent in excess of the maximum legal rent if they are subletting. I think this section deals quite well with what you are trying to do.

**Ms Harrington:** Thank you, Ms Poole.

**The Chair:** Further questions, comments to subsection 31(3)? Shall subsection 31(3) carry? Carried.

Section 31, as amended, agreed to.

Section 32:

**The Chair:** Subsection 32(1).

**Ms Harrington:** Subsection 32(1) is the provision that allows a tenant or a subtenant, depending on the circumstances, to make an application for the rebate of illegal additional charges at any time where she or he has been paid key money or any other payment as a condition for leasing a rental unit. A tenant or subtenant may also make an application at any time where she or he has been charged an amount of rent for part of a rental unit that, when added to all the other rents payable for the remaining parts of the rental unit, result in a total rent being higher than the maximum rent for the whole unit. Note, this is a government amendment that responds to concerns raised by tenants in submissions on Bill 121 that there need not be a conviction of an offence before an application can be made under section 32.

**The Chair:** Thank you. Questions, comments on subsection 32(1)? Shall subsection 32(1) carry? Carried.

Subsection 32(2).

**Ms Harrington:** Subsection 32(2) gives the rent officer the authority to make findings on whether the landlord or the tenant, in the case of sublets, has collected or attempted to collect an illegal additional charge and in such cases order the landlord or the tenant to repay that amount, provided the amount of the additional illegal charge does not exceed the monetary jurisdiction of the Small Claims Court which, for purposes of the Rent Control Act, is at least \$5,000.

**The Chair:** Questions, comments, amendments to subsection 32(2)? Ms Poole.

**Ms Poole:** Originally, in one of the other sections, I brought up the fact that it did not say "written findings." I believe the parliamentary assistant and Ms Parrish had undertaken at that time to take a look at the issue and hopefully to bring it in compliance throughout the act when we got to the procedural section that it would be written findings to which we were referring. I just wanted to bring to members' attention that we have another instance. If it is very clearly spelled out that it is written findings, it would be quite helpful.

**Ms Harrington:** I believe staff have already noted this section to be looked at.

**The Chair:** Shall subsection 32(2) carry? Carried.  
Subsection 32(3).

**Ms Harrington:** Subsection 32(3) provides that the amount of the illegal additional charge may be treated as if an application had been made under section 30, payment of illegal rent, for recovery of that amount and that the



order under this section may contain any terms and conditions that can be made under section 30, including the application of interest. Furthermore, under subsection 32(2), by virtue of subsection (5), a tenant may recover the total amount of the illegal additional charge through the courts where the amount is in excess of the monetary jurisdiction of the Small Claims Court.

**The Chair:** Thank you, Ms Harrington. Questions, comments? Shall subsection 32(3) carry? Carried.

Section 32, as amended, agreed to.

1530

Section 33:

**The Chair:** There is a government amendment, a technical amendment to clause 33(1)(d), if you could just explain that, and then I believe there is a Liberal amendment.

**Ms Harrington:** It is just a technical amendment in clause 33(1)(d) to correct the number there. It reads, "whether an agreement referred to in subsection 45(1) has been entered into as a result of coercion".

**The Chair:** Thank you. Ms Poole, you have an amendment?

**Ms Poole:** Yes, I do.

**The Chair:** Ms Poole moves that clause 33(1)(d) of the bill be struck out and the following substituted:

"(d) whether an agreement referred to in subsection 45(1) has been entered into as a result of coercion or because of a false, incomplete or misleading representation by the landlord or an agent of the landlord; and"

Do you wish to speak to that amendment?

**Ms Harrington:** I wish to speak to that.

**The Chair:** Generally speaking, Ms Poole would have the first opportunity.

**Ms Poole:** What we have done under 33(1)(d) is to place an amendment which would expand the difficulties with an agreement, not only to include coercion but also to include situations where there was a false, incomplete or misleading representation by the landlord or the agent of the landlord. We felt this was very important to insert into the legislation.

We also have a corresponding amendment under subsection 45(1) to this effect, because not all cases this section is meant to cover will be covered by coercion. There are other instances where a landlord or an agent of the landlord has given the tenant a set of false assumptions and that tenant has agreed to certain things or undertaken certain things because he believed there would be a different outcome. We felt it very important that tenants received the protection in cases where any representation by the landlord did not meet fairly strict criteria. I am very much hoping that the government would support this particular item since I think it is helpful for full protection of tenants and I look forward to hearing Ms Harrington's comments.

**Ms Harrington:** The government would be very pleased to accept this amendment from the Liberal Party.

**Ms Poole:** But? No buts? This is wonderful.

**Ms Harrington:** That's it.

**Ms Poole:** This has made almost all my work worthwhile. Thank you.

**Mr Mammoliti:** I am glad the Liberals have brought this forward, and I have spoken over the past few weeks about coercion and how it happens quite frequently, even in my riding. I understand you have another amendment, 45(1), but even if both of them go through, and I am anticipating that they will, we still as members have to make sure we define what is coercion as well perhaps. We have to look at our particular buildings and at the particular things that happen within our buildings and make sure that definition of "coercion" is there somehow. I do not know how we are going to do that. You know precedents mean a lot, and if the definition is not what we want, then it may hurt in the long run. I just thought I would mention that. I do support it.

**The Chair:** Further questions or comments?

**Ms Poole:** As the parliamentary assistant was going by she said to me, "Now you can be Robin Hood." So I am delighted to be Robin Hood for the day, for the moment or at least for the amendment.

With reference to Mr Mammoliti's request for a definition of "coercion," this may seem a strange thing for me to be saying when I have been so adamant about defining things such as "neglect," or at least providing criteria, and "inadequate maintenance" and terms such as that. Coercion is somewhat different, because coercion can be very subtle and if you try to define it, I think some of the subtle coercions, which any reasonable person might consider to be coercion, might not be covered under the definition.

For this particular one, while I agree that wherever possible we should be providing guidelines, I am not sure I would want a rigid definition. But any time we can have guidelines and criteria to assist the rent officer in making these decisions, I think it would be a good thing. I would just put on one proviso, that we cannot afford to make it too rigid, or else situations we want to be covered will not be covered.

**The Chair:** Further questions or comments? Shall Ms Poole's amendment to clause 33(1)(d) carry?

Motion agreed to.

**The Chair:** Questions or comments on subsection 33(1)? Shall subsection 33(1), as amended, carry? Carried. Subsection 33(2).

**Ms Harrington:** Subsection 33(2) allows a landlord, a tenant or the rent registrar to make an application to a rent officer to determine specific questions with respect to the rent information contained in the rent registry, including the following: (1) whether a notice of change of rent information should have been filed with the rent registrar; (2) whether the rent information filed with the rent registrar is correct and complete; (3) whether the maximum rent recorded in the rent registry is correct; (4) whether the rent information contained or a decision made in a notice from the rent registrar is correct and complete; (5) whether the calculated decrease to the maximum rent as a result of a lower market value assessment is correct or it should be recalculated as a result of an appeal of the assessment and, finally, any other matter prescribed under the regulations.



**The Chair:** Questions, comments or amendments to subsection 33(2)? Shall subsection 33(2) carry? Carried.

Subsection 33(3).

**Ms Harrington:** Subsection 33(3) sets out that the rent officer shall make findings on any of the issues put before him or her under subsections 33(1) and (2). Subsection 33(1) refers to status applications and subsection 33(2) refers to applications related to the rent registry. The rent officer would also have to follow any regulations made under the Rent Control Act. Decisions are expressed as orders.

**The Chair:** Questions or comments on subsection 33(3)? Shall subsection 33(3) carry? Carried.

Section 33, as amended, agreed to.

**The Chair:** At this point, maybe we should revert to subsection 23(5) to make the wording change that the committee had agreed on. Do I have unanimous consent to open subsection 23(5)?

Agreed to.

1540

Section 23:

**The Chair:** Ms Harrington moves that subsection 23(5) of the bill, as reprinted to show the amendments proposed by the minister, be struck out and the following substituted:

“(5) A person may make an application under this section as a tenant of a rental unit, based on a discontinuance or reduction in services and facilities, if the person was a tenant of that rental unit and was affected by the discontinuance or reduction of the services and facilities, even if the person is no longer a tenant of that rental unit at the time of the application.”

**Mrs Marland:** I think we should be proud about all the trees we are saving with this recirculated amendment, and the little insert looks like a comic conversation note. Anyway, as I said, I am intrigued that we are now doing this, since I did suggest it last week, and I am entirely complimented and flattered by the fact that the government is now moving an amendment I had suggested. Naturally I am very supportive of this amendment. I just wonder, was there a full moon over the weekend, or what happened to change things?

**Ms Poole:** I think I can offer an explanation for Mrs Marland. When she introduced the concept of changing the wording in subsection 23(5), that was before we had the new, improved air of cooperation among all three parties. Our minds were just obviously closed at the time. This week they are now open and we are passing amendments right, left and centre, so she just lucked into good timing this week. No?

**The Chair:** Shall subsection 23(5) carry?

Motion agreed to.

Section 23, as amended, agreed to.

**The Chair:** Now we are back to section 34.

**Mrs Marland:** You are doing a very good job, Mr Chairman.

**The Chair:** Thank you, Mrs Marland.

**Mrs Marland:** You must have a very good clerk who is keeping us on track here.

**The Chair:** We will start with section 34, but I notice there is an extensive amendment about to be proposed. You could give us a brief explanation of section 34.

**Ms Harrington:** Section 34 addresses the transitional issues as we move from one system to another. It saves provincial maintenance matters issued under the Residential Rent Regulation Act and transfers them to the director of rent control under the Rent Control Act. The director is identified as the recipient of all outstanding reports, orders and files currently held by the Residential Rental Standards Board. This permits smooth transition and ensures that the work done to date in prescribed files is not lost.

**The Chair:** Ms Poole has an amendment to sections 34 through 41, inclusive. I think the way to deal with this is to deal with Ms Poole's amendment to all those sections simultaneously, if that is the wish of the committee.

**Ms Poole:** That would certainly expedite matters. The Liberal amendments to sections 34 to 41 I believe are six pages long. In what is probably an unorthodox move, I would like to dispense with the reading of these six pages until such time as I get some indication from the parliamentary assistant about whether the government is willing to reinstate the standards board. If they are unwilling to reinstate the standards board, I do not see any purpose to wasting the committee's time and my breath going through six pages of amendments. Would that be agreeable to the committee?

**Mrs Marland:** That is a very good way to proceed.

**Ms Harrington:** That certainly is a reasonable thing to ask. I do not want anyone to waste their breath here. Let me indicate that the government has given certainly long thought to this. We have been through this for almost a year now, and we have listened to many considerations from all sides.

The government's position is that we are definitely trying to eliminate a step here, that we want fairness, which I am sure you are trying to have, but we also want a system that works efficiently, a system that works much better, and that is what the intent of the steps in this next few sections of the bill sets forward. So I will indicate to you, Ms Poole, that we have made a decision with regard to the standards board.

**Ms Poole:** Mr Chair, then I will move to dispense with the reading of the amendments. However, I would like to state for the record my concerns with the government's actions in this regard.

**The Chair:** In other words, you are not going to move the amendments.

**Ms Poole:** No. I am moving the amendments but I am moving to dispense with the reading.

**The Chair:** If you are going to move the amendments, you must read them.

**Ms Poole:** Okay. So you are saying that if I do not move the amendments, I cannot debate the substance. What I am going to propose to do is to read subsection 34(1).

**The Chair:** Just a moment while I consider what steps might be taken to be helpful to you and the committee. I see two alternatives, Ms Poole. One is that we could ask the committee for unanimous consent to discuss the principles behind these amendments, or you could discuss these amendments as we go through each clause that they relate to which the government has proposed.

**Ms Poole:** With the committee's indulgence, I would prefer option one. If the committee would grant unanimous consent to dispense with the reading of the six pages of amendments, then I would be prepared to discuss the principles without taking the time to read them into the record, if we could deem them read into the record for the purpose of Hansard.

**The Chair:** We cannot deem them read into the record. Unanimous consent would be to discuss it. If we could have unanimous consent from the committee, we can discuss the implications of these proposed amendments.

Agreed to.

**Ms Poole:** What the proposed Liberal amendments to sections 34 through 41 were intended to do would be to reinstate the standards board. The Residential Rental Standards Board was created by the Liberal government under the RRRA in order to provide a board that would deal with issues of maintenance standards, of ensuring that buildings were well maintained, and to provide an outlet for penalties to be made.

The standards board itself was a mixture of landlords and tenants with equal representation on the board. They had the ability to go through rent review and stay a landlord's obtaining of the guideline amount if the maintenance standards were not maintained. The board, I think, was an excellent concept. It was supported by both landlords and tenants. The difficulty and the delay at the standards board come about to a large extent because of the fact they had to go through rent review in order to get an order. I think what the ministry has done by abolishing the standards board is to actually throw the cat among the pigeons.

1550

The rent review process was primarily responsible for the delay of standards board orders. Therefore, it has now given the whole responsibility to rent review. To me, that is a very backwards way of working. The parliamentary assistant has said the reason they have made this change is they wanted to eliminate a step and they also wanted a system that works efficiently. I have not yet been convinced that putting more responsibility into the rent review system is one that is going to lead to greater efficiency. In fact, I believe the opposite is going to happen.

If a backlog develops at rent review over the next few years because of the fact that a substantial number of Bill 4 orders will have to be dealt with, plus a new system put into place, my fear is that issues of maintenance and standards will take a second seat to rent issues in the rent review system. Many tenants and many landlords have said that they think the concept of the standards board is a good one and that the standards board should be maintained and in fact improved.

What our amendments would have done is not only reinstate the standards board, but give it the direct jurisdiction to make the orders on its own without going through rent review. Once those orders were made for a rent penalty, then those orders would be transmitted to rent review so that the tenants could be advised, but they would not rely on rent review to make the decision. I am really quite dismayed that the government has chosen to lump maintenance standards and rents all in one big mass under rent review as opposed to having a separate board.

One of the difficulties we have had in Ontario is that there has been an alienation of landlords and tenants, particularly over the last year and a half. There are very few opportunities for landlords and tenants to get together and have a meeting of the minds. With tenant reps on this board and with landlord reps on this board, that happened to an amazing degree. I think that is what we should be fostering: landlords and tenants working together to make decisions that affect tenants and landlords. Does it not make a lot of sense? But instead what the government has chosen to do is put everything into the bureaucracy, put everything into rent review and the—

**Mr Winninger:** The air of cooperation is getting a little thin.

**Ms Poole:** The air is very high up here at the moment. I think the government is moving in the wrong direction, absolutely.

**Mr Mammoliti:** Is it 180 degrees?

**Ms Poole:** No. I am not even sure I give them half a circle, Mr Mammoliti; I think they have been running around in full circles. The problem with what the government is doing is that on the one hand the government has been extremely critical of the rent review process, extremely critical of the backlog. Yet in the same breath they are now saying, "We want to expand the jurisdiction of rent review and give them more to do rather than have the standards board as a separate entity."

I am not quite sure what the government actually does believe about rent review and rent officers, about backlogs and everything else, because I think it is creating a system where the matters dealt with by the standards board are going to be dealt with as a poor sister. If there is a rent order, then it is going to take precedence over the maintenance orders. I think this will particularly cause problems in municipalities where they do not have their own bylaws and standards, where the provincial standards apply.

When we were in Sudbury, the Muskoka Legal Clinic came before us. One of their very strong recommendations was that the standards board be reinstated. They said that particularly for northern communities and isolated communities where they did not have separate municipal bylaws and standards to address their concerns it was absolutely imperative that a body like the standards board be re-established. In fact, they felt that rent review would not do justice to their particular situation.

I could go on for a number of hours about what the standards board has done and what it is capable of doing and what it would be capable of doing if we expanded the jurisdiction instead of cutting it off at the knees. I guess it



is probably more accurate to say it has been cut off at the neck. But I really do not see any point in belabouring it. If the government has made the decision that it is not willing to put maintenance standards as the highest of priorities with a separate board to administer them, then I feel there is no point in continuing the debate.

**Ms Harrington:** I would just like to briefly comment that, as Ms Poole has mentioned, we have heard submissions with regard to this in Sudbury plus many other places. We have looked at all the issues surrounding this and we know it certainly has been of interest to tenants as well as landlords. We have substantially increased the remedies for inadequate maintenance, as you know, and the failure to comply with work orders is something we feel is an integral part of this piece of legislation.

In fact, this is more than in any other legislation in North America, to comply with the work orders, to make sure maintenance standards are enforced. So we feel we are adequately addressing this. We are improving the system, streamlining it, and we certainly believe it will work.

**Ms Poole:** I just have one question for the parliamentary assistant. If your government was so critical of the rent review system—and that is what we still have, no matter how many times you can call it rent control; it is still a rent review system—and if your government was so critical of the backlog and the inefficiency of the rent officers, why do you now take the position as a government that rent review should be expanded and in fact have jurisdiction over matters where it previously did not?

**Ms Harrington:** We could get into quite an extended discussion on this, but I would prefer not to. The one question you raised was with regard to backlog. I would ask Ms Parrish to comment about that particular situation and how it would be under the new legislation.

**Ms Parrish:** We have tabled material in response to questions that were raised before about backlog in the system and certainly it is no secret that there was a significant backlog when rent review was first started. That has diminished to a situation where there is no backlog except in the central Toronto area. All other areas are essentially at currency.

Under the new system of course there is always uncertainty. We are trying to manage our affairs to minimize backlog, for example, asking people who wish to make transitional capital applications to do it within six months of the proclamation of the new bill so that you can deal quickly with cases. It is important to remember that under the previous system the backlog was occasioned largely by bringing in a very significant number of buildings that had never been covered before, the post-1976 buildings. This was the major cause of the backlog.

The other significant factor is that under the previous legislation a significant number of applications were made related to financial loss, economic loss and so on. Those grounds for relief no longer exist, and that is likely to affect workload. On the other hand, there will be more applications from tenants for maintenance matters because they have the capacity to make application under this statute; they did not have the capacity to make application under the previous statute. We fully expect that tenants

will take advantage of those provisions in order to ensure better maintenance and better response to maintenance problems.

We have put in place a number of provisions designed to speed up the system, for example, the automatic work order system essentially suspending rent increases where a work order is issued. We will be looking at those sections fairly shortly, so there are a number of provisions designed to streamline but still give people the opportunity to have their case heard, and to give them a hearing at the first instance, which many people had asked for. I think that is as much as I can say on the issue of backlog.

1600

**Ms Poole:** To use a phrase from the not-so-late but very great Sam Cureatz, it is "passing strange" that a Ministry of Housing under an NDP government would say that the significant reason for the backlog from rent review was due to the significant number of buildings brought into rent review that previously were not. I can remember making those same arguments myself, so all the post-1976 buildings were brought into rent review due to Liberal legislation, the units that had rents greater than \$750 were brought into rent review and there was the creation of a rent registry. These three items significantly accounted for a massive influx of applications and created great problems with the backlog.

The most interesting thing is that when the NDP were in opposition it was the incompetence of the Liberals; the incompetence of the Ministry of Housing; the incompetence of the rent review officials; the incompetence of everybody, of course, except the NDP opposition. Now that they are the government, I guess they have come to the conclusion that they must have been wrong, that actually it must have been due to the massive influx of applications from buildings not previously covered under rent review.

I very much thank the parliamentary assistant and Ms Parrish for that explanation. I feel quite vindicated, for what I was saying for three years is now deemed to be truth. It is politically correct. It must be because it has been said by a Ministry of Housing official under an NDP government, and I will just tell all my tenants that we were right. What can I say?

**Mrs Y. O'Neill:** I thought about this quite a bit when the legislation was first presented. I find the reasons for the removal of the standards board are really bureaucratization of the whole system, and housing is for people. Housing is homes for people and the standards board, as Ms Poole has pointed out and as we all know, brought together tenants and landlords on a regular basis. They talked at a level that was meaningful, where progress could be made in the thinking of these two groups, and where—perhaps we can use the word here—compromises were reached that were helpful to tenants in general. There was an advocacy component to the standards board as well that, in my humble opinion, cannot be maintained in the bureaucracy.

With those few words, I feel there has been a great loss to the system. Many people across this province do not realize that this is going to go with Bill 121. There certainly are



enough fears about Bill 121 and this is just one more nail in the coffin.

**Mr Jackson:** In my capacity as Chair of the estimates committee, I had occasion to examine some questions with respect to rent review. Of course, this was an area I was actively involved in, not only because I did not vote for Bill 51, but I was the critic and had occasion to raise a lot of questions about it.

My information is that the computer program for the rent registry has been an abysmal and costly failure, and it was only in the recent estimates that the minister and staff confirmed that all those lengthy glitches have been cleared out and in fact we might anticipate some more stability in this area. To the extent that is true, it is on record and may be one of the most serious problems faced. I know the rent registry was doomed from the start because they could not get the computer program to work and they could not get the 9Rs out fast enough to get the responses.

To the point that was raised and this motion in particular, the standards board approach which was in the old legislation had some positive and some negative aspects to it, and my concern is in the area of compliance and ultimate authority here. In my view, the old system relied heavily on municipal involvement, and I think it is naïve to suggest that the bureaucracy is going to be able to deal with this.

I was critical of municipal involvement because it was a pure case of downloading. As you know, municipal standards bylaws are not mandatory in this province. Some municipalities have them; some do not. Some municipalities only have a portion in their municipality because they were an outgrowth of the original federal-provincial agreements for redevelopment and rehabilitation and they said, "If we're going to be putting moneys into rehab housing units in the core areas, then you must have a bylaw governing standards. Otherwise, you'll just take money and spend it willy-nilly." They had to have a regulatory framework for it to work. But rental units in this province do not all comfortably fit into these areas.

In my view—not that I am always looking for regulatory authority—it is clear that the province has a patchwork as it relates to making standards and bylaws. I am not clear in my own mind what the solution is and who is going to pay. My fear is that nothing will happen. At least with the Liberals' plan the ultimate responsibility fell on the local municipality, which then has to step in regardless.

But again, it all comes from taxpayers' pockets, regardless of whether it is payment to the federal government, the provincial government or the municipal government. The point I am really getting at is I am worried that this process now throws it into limbo, into a no person's land. At least we knew with the standards board that we had a circumstance where it could be explained to tenants what the cost implications for those items could and would be and what is required, and what is expensive and what is not expensive.

I think we should heed some of the concerns raised by Ms Poole. If you listen to some people, they will tell you there are absolutely no redeeming values in Bill 51. There were some redeeming values. There were not enough for me to vote for it, but there were some redeeming values. I

travelled all over this province on all those hearings. You cannot say that everything about that bill was wrong.

I fear the government may have glossed over this area in some degree of appeasement. I am quite concerned that in this next four-year period the whole issue of maintenance standards is going to be tested to the extreme, even from the point of view of quality work and performance. I am not convinced that the framework being proposed by the government is the most appropriate one. Those comments were mostly for the record.

**Ms Harrington:** I wonder if it might be helpful for us to briefly outline exactly how the system will work, if that can be done briefly.

**Mr Jackson:** Do you want to rub salt in our wounds? I understand how it works; I just wanted to put it on the record. I do not think we have to dwell on that. I did not want to debate the issue. I have a lot of experience in this area and I have some concerns on behalf of my tenants and my landlords, who appreciated being able to sit down to discuss it.

**The Chair:** To be helpful to the committee, perhaps an explanation of how the system would work would be more appropriate when we go through the sections clause by clause. We have undertaken a rather unusual procedure here to begin with. If it is agreeable now, we could revert to the clause-by-clause. I am certain the other issues members wish to raise will come up as we go through the particular sections that revolve around this important issue. So with that, section 34. Is that all right, Ms Poole?

**Ms Poole:** One further comment on my proposed amendments, which I have not withdrawn yet.

1610

**The Chair:** If you would like to wind up your discussion, that is fine. Then we will move to section 34.

**Ms Poole:** Mr Chair, one thing we have not discussed today is the fact that right now, with the standards board, we have a body of knowledge. We have a group of trained people who are experts in the area of looking at compliance at property standards, at maintenance standards in the province. Once you disband that type of group, the problem is that you are setting in motion things you may not be able to reverse later. If you disband a very knowledgeable body that is functioning well, it would take quite a time to get that body of knowledge and that expertise together again, if after three or four years the government in its wisdom deems it necessary to reinstate a standards board because it is not working within the rent review system.

It is the same problem I have with abandoning the appeals board. Aside from all the other arguments about what it is going to do to take away rights of tenants and landlords with the right of appeal, once the appeal board is gone it is going to be extremely difficult for them to ever build it up again should they decide in their wisdom some three to four years down the line that they made a mistake.

So in each of these areas where willy-nilly the government has come in and said, "This was the Liberal conception, ergo, it must be bad," I think that with some thought given to it, in later years it may find it really destroyed a tool that could have been very helpful in implementing



what the government desires in the way of protection of tenants with relation to property standards, maintenance and compliance. I really think this government will rue the day when it destroyed this very valuable board and the work it has been doing.

**Mrs Marland:** It will be missed.

**Ms Poole:** It will be sorely missed.

**The Chair:** Thank you, Ms Poole.

**Ms Poole:** That was a eulogy.

**The Chair:** We will now move on to section 34.

**Ms Harrington:** I just wanted to comment.

**The Chair:** We have another comment on Ms Poole's comment.

**Ms Harrington:** I certainly appreciate the eulogy, the tone of it, except for your statement that the only reason the government took this approach was because the standards board was a Liberal creature, let's say. It is certainly not true. It was not for those reasons. It was because of an evaluation of the total situation and an effort to make sure that we had a good system in place.

**Ms Poole:** Is this a confession or admission by the parliamentary assistant that some Liberal ideas are good ideas? Is that what we are coming down to?

**Ms Harrington:** I think we have signified that through several amendments.

**Ms Poole:** Only if they agreed with it.

Section 34:

**The Chair:** Perhaps we could deal with section 34 directly. Ms Harrington, with the permission of the committee, as we have dealt with Ms Poole's concerns on this issue through sections 34 to 41, perhaps this would be a good time for you to give us an overview of how these sections are intended to work. We will give it a general overview, and then we will deal with the particular clauses.

**Ms Harrington:** Are we going to vote on section 34 first?

**The Chair:** Is it not all in the same part? You were wishing to give an explanation of how—

**Ms Harrington:** Maybe when we come to that part. Is that all right?

**The Chair:** Okay, fine. I thought we were there.

**Ms Harrington:** We first have to vote on this, do we not?

**The Chair:** No, we are commencing with section 34, which is titled "Compliance with Standards." I was just wondering if this would be the appropriate time to give us a general overview of sections 34 through 41 so that we all understand what we are talking about.

**Ms Harrington:** I would like to do it on section 35, if that is all right.

**The Chair:** Sure. Let's go with section 34, then. Questions or comments? Ms Harrington has made an explanation of section 34. Shall section 34 carry? All in favour?

**Ms Harrington:** Yes, we are in favour. Do you want us to raise our hands?

**The Chair:** Please raise your hands if you are in favour, yes. Opposed?

Section 34 agreed to.

Section 35:

**The Chair:** There is a government amendment to section 35 as printed, I believe. Ms Harrington.

**Ms Harrington:** Section 35 of the bill has provisions with respect to the receipt of municipal work orders that are set out in subsections 35(1), (2) and (3). A municipality may issue a work order under any bylaw respecting occupancy and maintenance standards or any general or specific act such as the City of Toronto Act.

At this point I would like to place a government motion, an amendment to subsection 35(1).

I move that subsection 35(1) of the bill, as reprinted to show the amendments proposed by the minister, be amended by striking out the first four lines and substituting the following:

"Subject to subsection (2), the director shall receive a copy of any order relating to a residential complex or a rental unit in it or any notice of appeal or decision on an appeal from such an order if the order is," and then it lists the qualifications.

**The Chair:** I am having some difficulty finding the copy of that, Ms Harrington.

**Ms Poole:** This is the January 14 package of amendments, I believe.

**The Chair:** Thank you, Mrs Poole. Do all members have a copy of the amendment just placed by Ms Harrington, just so we are all looking at the same thing.

**Mrs Marland:** Just a moment. I have them in my binder, but they're not punched.

**Mr Mammoliti:** Bring it over here and I'll give it a belt.

**The Chair:** All right, I think everyone has found where we are. Do you wish to place an explanation for the amendment, Ms Harrington?

**Ms Harrington:** This amendment provides that the director shall now receive any notice of appeal or appeal decisions related to an order issued by a property standards officer or made under any general or special act respecting standards of maintenance, along with the work order. This is necessary in order to know whether a prohibition of rent increase should be imposed immediately, or imposed but the effect stayed during the appeal period.

**Ms Poole:** Under ordinary circumstances this would be a reasonable amendment as a point of clarification of what happens when there is an appeal in effect. The Liberal caucus will not be supporting it because we do not agree with the principle that the standards board be abolished and the system be brought into rent review.

1620

**Mrs Marland:** We are into some really interesting wording here. First of all, when the parliamentary assistant read the explanation, she said this amendment is necessary in order to know whether a prohibition of rent increase should

be imposed immediately or imposed. I do not understand that at all. I know what imposed immediately means.

**Ms Harrington:** Or imposed but the effect stayed during the appeal period. Those are the two alternatives.

**Mrs Marland:** Could you explain that?

**Ms Harrington:** We will try.

**Ms Parrish:** This really relates to later amendments in this section, in 35(2) and (3). Essentially, when the work order comes in and the municipality says, "There's been a work order. The landlord has been given a time to comply and has not complied and has not appealed our work order," then the director would immediately impose the prohibition on rent increase.

Alternatively, the municipality could say to the director of rent control, "We have imposed a work order and there has not been compliance. However, the landlord has appealed our work order, arguing that it should not be maintained," for whatever reason the landlord has. At that stage we would say: "All right. There is an imposition of a prohibition on rent increases, but it is stayed, ie, it doesn't go into effect, during this appeal period." So the landlord continues to increase the rent under the statutory scheme, pending this appeal.

Later on the sections say, "What if the landlord has this appeal and the courts say, 'There's no merit whatsoever in your appeal, we completely dismiss your appeal, and the work order is in force'?" Then we would say that the imposition of this rent penalty was no longer stayed, and if the landlord had taken rent increases during this period, he would essentially owe the money back to the tenants.

This section is part of a series of amendments which occur here and later that essentially prevent the delay involved in appealing to be misused. If, however, the courts say, "Landlord, we agree with you that this work order was improperly imposed on you," then there would be no prohibition of rent increases. So this really deals with the later system, which is designed to ensure that the ability to appeal work orders is not merely used to avoid the application of these provisions, which prohibit rent increases until work orders are complied with.

**Mrs Marland:** If the work order is upheld by the appeal board—

**Ms Parrish:** By the courts. There could be another panel appealing this. It depends on the municipality.

**Mrs Marland:** That was what I wanted to know. Who hears these appeals? It depends on the municipality?

**Ms Parrish:** Some municipalities have an internal appeal system and in some municipalities you go directly to the court.

**Mrs Marland:** So if the work order is upheld by the hearing body, whatever it is, and that process takes 12 months or any long period of time—it is not so likely if it is a municipal hearing panel—but if it goes before the courts, it is not going to be high on the priority list, I suspect, for hearings set within crowded courts. A year later, the work order is upheld. Are the tenants then going to be entitled to a rebate on the increased rent they have paid?

**Ms Parrish:** Yes, because the work order was imposed. It was imposed as of that date, but the effect would stay during the appeal period.

**Mrs Marland:** It violates any rent increase that was granted during the outstanding deliberations of the work order?

**Ms Parrish:** It disentitles the landlord from receiving the money. The landlord will not have committed an offence under the statute, so we would not be able to prosecute him, but the tenants would be entitled to receive back any moneys during this period.

**Mrs Marland:** Municipalities which do not issue work orders, and I understand there are some. Is that correct?

**Ms Parrish:** I just want to clarify one thing. If you have a municipality that does not have any standards bylaw, it will be covered by the provincial standard, which would be very similar to that which is currently in place under the standards board now. That would be prescribed by regulation. First of all, if you have a municipality that has no standards, as is the case now, it would be covered by the provincial standards. You may have a municipality that has standards but does not issue work orders, so in the first case what you will have is that the province will issue the work order as it does now.

The second case is a more difficult situation. Because the system does depend on a municipal work order to be triggered, you must have a municipal or provincial work order in order to start this system operating. The tenants of course also have the ability to make a direct application on their own behalf itemizing that there is inadequate maintenance.

**Mrs Marland:** But you are disbanding the standards appeal board?

**Ms Parrish:** The board is gone under this statute, but the functions of the board are retained. The standard is retained, the ability to enforce the standard is retained and the ability to do inspections and issue work orders is retained. They are the same functions. It is just a different method of performing those functions.

**Mrs Marland:** The standards appeal board is gone but the functions remain. That means you are going to have a whole lot more of little wizards running around and doing the functions, I suppose. Who is going to do all those functions? In a municipality that does not issue work orders, you said it is within the jurisdiction of the province to issue the work orders if there is a complaint by a tenant.

**Ms Parrish:** If the municipality does not have any standards bylaw, then the provincial standard applies and there is a provincial order issued. If you have a municipality that has a standard, then we have to wait for it to issue a work order. It is their obligation, under their bylaw, to issue work orders.

**Mrs Marland:** When you say "standards," Ms Parrish, you are talking about property standards, are you not?

**Ms Parrish:** Yes. Basically they are usually called property standards now.

**Mrs Marland:** I know they are. In our municipality we have property standards bylaws and we have bylaw



officers who enforce those property standards. In Mississauga we also have a committee that hears complaints under the property standards bylaw, but where none of that exists you are now saying the province has the legal power to issue work orders under property standards complaints.

1630

**Ms Parrish:** Under provincial property standards.

**Mrs Marland:** Right.

**Ms Parrish:** The same as they do now.

**Mrs Marland:** Okay. So what ministry enforces those standards? If I call with a complaint as a tenant, who comes out from what ministry to look at my complaint and decide that it qualifies for a work order?

**Ms Harrington:** When we did our travels through the province I remember in various areas, specifically down towards the Kingston area, we heard some rural people in Hastings county or in that area describing how things operate down there. This is exactly what you are talking about. There are provincial standards which apply because they do not have municipal standards and there is an office—I am not sure whether it is in Kingston or Belleville—of the Ministry of Housing and it has inspectors who go out and do that function.

**Mrs Marland:** So the inspectors are employees of the Ministry of Housing?

**Ms Parrish:** We will be discussing this in greater detail in section 36 which talks about this.

**Mrs Marland:** Oh, I might not live that long.

**Ms Parrish:** I would be very sad if that was the case.

We have two systems of inspection under the current statute and that is likely to stay the same under the Rent Control Act. We have employees of the Ministry of Housing who are inspectors and they do inspections. We also retain as agents municipal building inspectors from nearby municipalities, for example.

We give them a per diem to come out to inspect and we also use people on a per diem or agency basis. For example, we retain people who have recently retired from being building inspectors; there are a number of part-time people who are retained on a case-by-case basis. So we have two kinds of people, agents and our own staff, and that would continue under the new section.

**Mrs Marland:** You know, this becomes more interesting because now we have retired part-time people doing inspections. We have agents who are seconded from being bylaw officers in municipalities—tell me if I am correct in interpreting what you have just said—and the people who are seconded from the municipalities are paid a per diem. I would certainly like to know a little more about how that convoluted system could work.

**Ms Harrington:** If you would like, we can try to explain clearly or briefly how that situation would work if someone has a complaint. Is that your desire?

**Mrs Marland:** No. I can picture how it works if somebody has a complaint. What I am looking at here is, we are eliminating the standards appeal board and we are

giving this autonomy to people who may be—I do not know whether they are moonlighting from the municipality or the municipality has agreed that they can be seconded from their staff on a per diem to go and do these inspections in that municipality.

We need a lot more information about how this is going to work, because it would seem to me that if the taxpayers in the municipality which is paying for its staff to do a certain job knew some of that staff deployment was being applied to enforcement in a provincial government jurisdiction—if the ministry started using our bylaw officers from Mississauga, which would not happen because we have our own standards enforcement—I would have a lot of questions if I was a taxpayer in some small community. I am sure that if we could afford an inspector, his time would be fully deployed.

Now we are saying the Ministry of Housing can come along and for a per diem can take that staff person and have him do the Ministry of Housing inspection and enforcement. It is rather an interesting, almost incestuous relationship, I would suggest, between the province and the municipalities. I would like to know where it goes on and I would like some examples of how it works.

Let's set that aside. That in itself needs some explanation I think in order for it to be accepted, in order to make this work, but the appalling part comes when you look at the power that is given to these people. There is no appeal to their judgement, is there?

**Ms Parrish:** All the inspector can do is make the report, like he does now. You have to go before a rent officer if you want to dispute it. You have the same right of hearing as you would in the other case, but somebody has to do the initial assessment and the original inspection and make a report. Then the parties can dispute whether or not the inspector was right. There is a right to have a hearing and have the evidence tested. The inspectors simply make their report. Section 36 lays out the situation. It is the director of rent control who directs the inspector to make his report. They then can have that tested in a hearing before a rent officer before there is a final work order issued.

**Mrs Marland:** Have you explained why you are discontinuing the standards appeal board?

**Ms Harrington:** Yes. I believe you may not have been in the room at that time.

**Mrs Marland:** In that case, I will read Hansard, if you have actually answered that direct question.

**Ms Harrington:** I would like to briefly comment on what Mrs Marland has said so far. I think this is important. What she is actually getting at is how these processes happen and how the tenant accesses this legislation to make sure that they are helped by this legislation with regard to maintenance.

As you may appreciate, the rural areas are a little different in many ways than the urban areas. Because I have been working on a new Building Code Act, I know that when buildings are put up in many parts of remote Ontario there are no building inspectors available through the municipality, and certainly not if it is a complex building, like an

industrial-type building, and they do have to bring in experts to do the inspections.

This system across Ontario is a reflection of differences between rural and urban areas. The province does have this responsibility where there are no municipal inspections. It is a concern, because we want to give equal treatment and equal opportunity to everyone, so I thank you for bringing this up. It is something we have been looking at and our staff people are working on: that everyone has the same opportunity for the protection of this legislation.

I wonder if staff would like to comment any further on that.

**Ms Parrish:** No, I think you have answered that one.

**Mrs Marland:** Do you think it would be possible to have some examples given to us about how you see this working? It just sounds very haphazard, this hiring retired people and the deployment of municipal staff on a per diem basis paid by the ministry. I really would like to know how that works today. If that is what is in effect today, I would like to know how that is done. If somebody can give me a brief précis answer to that tomorrow or Wednesday, that is fine. I would just like a description of how that actually works and maybe an example of the size of municipality we are talking about.

1640

**Ms Harrington:** We would like to provide that tomorrow under section 36 because that is where it would be most appropriate.

**Mrs Marland:** How will I get it tomorrow, in writing or verbally?

**Ms Parrish:** We will use our best efforts to get you something in writing. Realistically, if you want it in writing, it is more likely to be afternoon. If you want it orally, I could probably tell you by tomorrow. It is not for me to speak as to how the committee would like to receive the material.

**Ms Harrington:** If it is okay with you, Mrs Marland, in the course of our discussions on section 36 we will give an example and if that is adequate for you we will leave it at that. If you want something further in writing, then we will provide it.

**Mrs Marland:** Is that because you are going to have to look up a specific example to explain how it works? Seriously, if you are only going to give me an example why not give it to me today? I do not want an example in the land of Oz, I would like an example in Ontario, a small rural community where that is the system working today under the existing legislation and that this is what you actually do; that the ministry enters into a contractual agreement with the municipality to use their bylaw officers

or their building inspectors to go out on a per diem basis, which is what you said, to enforce the act.

**Ms Parrish:** I am sure I can give you an example. The only reason I am not proceeding now is that I want to make sure, when I give members of the committee information, that it is accurate.

**Mrs Marland:** That is fair enough. I will accept that, but I would like it in writing so I can research it myself. In this reason for an amendment where you refer to "or made under general or special act respecting standards of maintenance" you do not want to say what acts you are referring to there. Are you talking about the Municipal Act or the Building Code Act? Is that why you are not specifying it because it is a number of acts?

**Ms Parrish:** There are a number of acts in addition. There are quite a few municipalities that have their own special legislation and if we listed them every time—if the city of Mississauga, which has a City of Mississauga Act, decided to put something in its act we would have to open this up. There are quite a few municipalities that have special legislation. The city of Toronto is a good example.

The other thing is that there are quite a few statutes. For example, there is the Elevating Devices Act. There are public health statutes under which we can receive orders. The Elevating Devices Act is an example of where the order is not from a municipality but from a provincial ministry and the job is to inspect for faulty elevators.

**Mrs Marland:** Is it possible that it could be so broad as to be a complaint under the Pesticides Act on the property of an apartment building? Anything that affects that dwelling unit—there could be a whole list of acts.

**Ms Parrish:** It has to pass the test that it is in the residential complex or rental unit and in relationship to health and safety of occupants. I suppose your point is well taken. I cannot say I know from my personal knowledge, but it is quite possible that the building was sprayed with some inappropriate chemical that could hurt the health or safety of these individuals.

**Mrs Marland:** I have quite a bit of concern with the wording or implications of this as it stands, but I will yield the floor to someone else.

**The Chair:** Further questions or comments to Ms Harrington's amendment to subsection 35(1)? Shall section 35(1) carry? I am sorry, I put the question incorrectly. Shall Ms Harrington's amendment to subsection 35(1) carry? All in favour?

**Mrs Marland:** We would like a recorded vote, Mr Chairman, and I guess we need 20 minutes.

**The Chair:** In that case, due to the hour I suggest we take this up at 10 am tomorrow. Committee adjourned.

The committee adjourned at 1647.



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**Vice-Chair / Vice-Président(e):** McClelland, Carman (Brampton North/-Nord L)

Abel, Donald (Wentworth North/-Nord ND)

Bisson, Gilles (Cochrane South/-Sud ND)

Harrington, Margaret H. (Niagara Falls ND)

Mammoliti, George (Yorkview ND)

Marchese, Rosario (Fort York ND)

Marland, Margaret (Mississauga South/-Sud PC)

O'Neill, Yvonne (Ottawa-Rideau L)

Poole, Dianne (Eglinton L)

Turnbull, David (York Mills PC)

Winninger, David (London South/-Sud ND)

#### **Substitution(s) / Membre(s) remplaçant(s):**

Jackson, Cameron (Burlington South/-Sud PC) for Mr Turnbull

Morin, Gilles E. (Carleton East/-Est L) for Mr McClelland

Owens, Stephen (Scarborough Centre ND) for Mr Marchese

Ward, Brad (Brantford ND) for Mr Bisson

**Clerk / Greffier:** Deller, Deborah

**Staff / Personnel:** Baldwin, Elizabeth, Legislative Counsel





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First Intersession, 35th Parliament

## Assemblée législative de l'Ontario

Première intersession, 35<sup>e</sup> législature

# Official Report of Debates (Hansard)

Tuesday 28 January 1992

# Journal des débats (Hansard)

Le mardi 28 janvier 1992

## Standing committee on general government

Rent Control Act, 1991

## Comité permanent des affaires gouvernementales

Loi de 1991 sur le contrôle  
des loyers

Chair: Michael A. Brown  
Clerk: Deborah Deller

Président : Michael A. Brown  
Greffière : Deborah Deller

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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON GENERAL GOVERNMENT

Tuesday 28 January 1992

The committee met at 1011 in committee room 1.

### RENT CONTROL ACT, 1991

#### LOI DE 1991 SUR LE CONTRÔLE DES LOYERS

Resuming consideration of Bill 121, An Act to revise the Law related to Residential Rent Regulation / Projet de loi 121, Loi révisant les lois relatives à la réglementation des loyers d'habitation.

#### Section 35:

**The Chair:** The standing committee on general government will come to order as we continue our review of Bill 121 clause by clause.

The first order of business today is to take the vote on Ms Harrington's motion to subsection 35(1). Would members all take their seats. All those in favour of Ms Harrington's motion to subsection 35(1)? This will be a recorded vote.

The committee divided on Ms Harrington's motion, which was agreed to on the following vote:

#### Ayes—6

Abel, Harrington, Mammoliti, Owens, Ward, Winninger.

#### Nays—4

Marland, Morin, O'Neill, Y., Poole.

**Ms Poole:** Mr Chair, I have two deputations in writing to submit for the committee's information. Until Mr Mammoliti submitted the presentation from Mr Frank Haines yesterday, I did not realize that this was allowable, but since it is, there are two matters I would like to distribute through the clerk.

The first is a letter from the board of directors of the 400 Walmer Road Tenants Association and it concerns the matter of equalization. Unfortunately, by the date I received this letter the equalization section had been rejected by the government. But I think it is very important for members of the committee to have an opportunity to read this letter and see an actual example where rents were not illegally obtained and where the tenants very much would like the equalization process. This is for members' information.

The second piece I would like to distribute is an open letter to the Premier of Ontario by Minto Developments Inc. This was a large ad in the Ottawa Citizen this past weekend which dealt specifically with Bill 121. It just put a very different picture on why a substantial number of people in the province are very concerned about the legislation and the work this committee is engaging in. It does mention a few statistics, such as the fact that Minto has reduced capital expenditures on its rental buildings from \$7 million in 1990 to less than \$2 million for 1992, and this has led to a dramatic loss in Ontario of an estimated 25,000 jobs and has significantly worsened the current recession.

This just puts a different perspective on it, so I will submit that for the clerk's action.

**The Chair:** Thank you, Mrs Poole, for the information. I should point out, though, that there is a difference between the information you are providing and what Mr Mammoliti provided, which was a letter addressed to the Chairman of the committee. But thank you for the information.

Returning to section 35, there is a government amendment, as printed I believe, to clause 35(1)(b). Do all members have a copy of the government amendment to clause 35(1)(b)?

**Hon Ms Gigantes:** It is a very simple amendment, Mr Chair.

**The Chair:** Perhaps we should have it moved, Minister. We will need a member of the committee to move it, Ms Harrington perhaps.

Ms Harrington moves that clause 35(1)(b) of the bill, as reprinted to show the amendments proposed by the minister, be amended by striking out "in the municipality" at the end.

Is there an explanation?

**Ms Harrington:** It is a technical amendment to clarify that this section applies to unorganized territories as well as municipalities.

**The Chair:** Questions, comments?

**Ms Poole:** Although we have no objection to the intent of the amendment, which is to clarify that unorganized territories are included, on principle the Liberal caucus will be voting against this amendment since we are very much in favour instead of reinstatement of the standards board.

**The Chair:** Further questions, comments? Shall Ms Harrington's amendment to clause 35(1)(b) carry? All those in favour? Opposed?

Motion agreed to.

**The Chair:** Shall subsection 35(1), as amended, carry? Carried.

Subsection 35(2), questions, comments, explanations?

**Ms Harrington:** The government has an amendment to subsections 35(2) and (3).

**The Chair:** Do members all have a copy of the government amendment to subsections 35(2) and (3)?

Ms Harrington moves that subsections 35(2) and (3) of the bill, as reprinted to show the amendments proposed by the minister, be struck out and the following substituted:

"Idem

"(2) The director shall receive an order under subsection (1) only if,

"(a) the period for compliance with the order has expired or, if the order has been stayed, the period for

compliance with it would have expired had the order not been stayed;

"(b) the order has not been complied with; and

"(c) the time for appealing the order has expired.

"Municipality to forward work orders

"(3) The council of a municipality shall forward to the director any order of the municipality or notice of appeal referred to in subsections (1) and (2) as soon as practicable and no later than the last day of the calendar month following the month in which the period for compliance with the order has expired.

"Idem

"(4) The council of a municipality shall forward to the director any decision on appeal of an order referred to in subsection (3) as soon as practicable and no later than the last day of the calendar month following the month in which the decision was issued."

Is there an explanation for the amendment?

**Ms Harrington:** I am wondering if the minister would like to explain, or would she like me to explain?

**Hon Ms Gigantes:** Go right ahead.

**Ms Harrington:** This amendment provides that the director now shall receive copies of all municipal work orders, including those which are under appeal. The municipality must forward such orders once the period for compliance identified in the order has expired.

The amendment to subsection 35(3) requires that, where an appeal is made against a municipal work order, the municipal council must forward to the director the notice of the appeal at the same time that the work order is forwarded, as soon as practicable and no later, as I mentioned.

Subsection (4) is new and provides that the municipality must also send the appeal decision to the director as soon as practicable and also before the last day of the calendar month following the month in which the decision was issued.

This information is necessary in order to know whether rent increases should be prohibited.

**The Chair:** If the Chair could have one brief question, as we amended the previous section to deal with unorganized territories—being a northern member I understand these a bit—I am not aware of any case where an unorganized territory has jurisdiction at present for work orders etc, but it is quite possible that they could in the future, and maybe even now they do. How does this apply to them?

**Ms Harrington:** You might ask Colleen to clarify that.

1020

**Ms Parrish:** We do have an amendment in clause 35(1)(b) that deals with the unorganized municipality problem. It is true that right now we do not have any unorganized territories that do this directly. My understanding is that in this section the word "municipality" does not refer to unorganized territories. So right now this section would not cover unorganized territories, because my understanding is that technically they are not municipalities. They do not meet the test of being a council of a municipality.

**The Chair:** That is true, but there are some rather innovative structures in some of the unorganized areas where local service boards, for example, may have jurisdiction in a number of areas and may request the jurisdiction in this area. There is also the opportunity in at least one case for a planning board, which represents a group, to have this kind of jurisdiction. Now I think you are correct that presently no-one does, but the law allows it as I understand it.

**Ms Parrish:** Certainly the amendment to clause 35(1)(b) that was made suggests you may have a bylaw that is passed, or a standard passed, in a place which is not a municipality. The problem is that we do not then require the municipality to forward the material. I guess these sections are essentially sections that make you do something. I am sure my colleague may have some things that he wants to tell me too, so I may just pause. But it seems to me that if you were concerned about that, I suppose you could create some sort of regulation-making authority that says you could designate some other body, for example, because you would not want to say to a local planning board in an unorganized territory that you will forward these things if they have not assumed the responsibility.

I think this drafting is fairly clear that it is only municipalities that are made to do this. Anybody else can do it and they have permission to do it, but they do not have to do it. It says in clause 35(1)(c) that we can receive these from anybody. The director may receive it, but only municipalities must do it.

Now if the committee was interested in expanding that, given the fact that to my knowledge no unorganized territory does this, and there was a desire to make it mandatory so that if they do issue these they must send them to us, as opposed to permissive as in clause 35(1)(c), I think it would be possible to add that anybody we designate by regulation must also do this. That would be a way of doing it.

Otherwise, what I think these sections say together is that the local services board of an unorganized territory may send it to the director and if it does, the director must do something with it, but only municipalities must send it to the province. So the question is whether or not you want to move these local services boards, for example, into the "must" category from the permissive category.

**The Chair:** As the Chair, I was just trying to clarify it. I was just bringing that to your attention, wondering if that was the intent of the ministry. I now understand what the intent of the ministry is. Further questions and comments?

**Ms Poole:** Just on a point of clarification, I have two government motions in my book, the one which was just read out and another one which deals with subsections 35(1), (2) and (3). Am I correct in assuming that this latter government motion would be withdrawn and superseded by the second one?

**Hon Ms Gigantes:** I do not have such a motion.

**The Chair:** We will just check that.

**Ms Parrish:** In the reprinted version of the bill, both subsections were amended. You are correct that we are



withdrawing (2) and (3) and substituting the new amendment, and 35(1) is amended in the opening and in clause (b).

**Ms Poole:** So basically we are to ignore the government amendment which we originally received at the time all the amendments were filed with committee, because it has been dealt with in both the reprinted version and also with your new amendment tabled on January 14. I just want to know what to do with this piece of paper I have in my book.

**Ms Parrish:** When we reprinted the bill, we did provide the loose-leaf copies of all the amendments in the bill, because we were required to annotate each and indicate the reason for each. Some members find that helpful and others prefer to use the printed bill only, and then any supplementary amendments that have been filed by any of the parties or by the government.

**Hon Ms Gigantes:** The answer is, that is in your reprinted bill.

**Ms Poole:** Yes. This is in my reprinted bill and it was a government amendment tabled on October 31. Since the amendment you read this morning deals with subsections (2) and (3), it in effect revokes what you have put in subsections (2) and (3) in the one you tabled on October 31.

**Hon Ms Gigantes:** Yes, that is correct.

**Ms Poole:** So we do not have to worry about this piece of paper.

**Hon Ms Gigantes:** You have it.

**Ms Poole:** Thank you.

**The Chair:** Further discussion on Mrs Harrington's amendment to subsections 35(2) and (3)? Shall Mrs Harrington's amendment to subsection 35(2) and (3) carry? All in favour?

**Mr B. Ward:** Twenty minutes?

**Ms Poole:** Mr Chair, can we have unanimous consent for five minutes?

**Hon Ms Gigantes:** Sure.

**Interjection:** No.

**The Chair:** No? The vote will be held at 12 minutes to 11.

The committee recessed at 1028.

1029

**The Chair:** We will reconvene. All in favour of Mrs Harrington's amendment to subsections 35(2) and (3)?

Motion agreed to.

Section 35, as amended, agreed to.

Section 36:

**The Chair:** Shall subsection 36(1) carry? Carried.

Shall subsection 36(2) carry? Carried.

Subsection 36(3): Questions, comments, explanations or amendments? Mr Jackson.

**Mr Jackson:** It talks here about an inspector to make whatever inspections a director considers necessary to determine whether a landlord has complied with the prescribed maintenance. Can someone please give me a brief description of who the inspector is?

**Ms Parrish:** The inspector is a person who is designated by the director to make inspections, and the inspectors we currently use are all qualified property standards officers who have experience and training in the area. The reference to different kinds of inspections is that, depending on the situation, you may have to designate somebody, say, who is a structural engineer or whatever. Some cases are more complex than others but normally our inspectors are property standards officers.

**Mr Jackson:** Can you tell me who pays for those private sector consultants to come in and verify or do the work of an inspector? Has the ministry division a budget for all of this? I agree with the process, because that is how we had to do it on behalf of tenants. When we did our major appeal we had to bring in the consultants in order to verify various documentation and inspections.

**Ms Parrish:** We currently do this now.

**Mr Jackson:** To a degree, yes.

**Ms Parrish:** So we would continue to use the staff. The short answer is the ministry pays because the ministry is doing the inspection and it is its inspection. But we have a system now of using property standards officers and that seems to be a system which has found some favour, although it is not perfect and may have to be improved in the future. Essentially it is the government that does pay.

**Mr Jackson:** Another very quick question, and I appreciate the short answers. Has the number of employees in this area grown, and to what extent is it anticipated that it will grow?

**Ms Parrish:** We have 34 part-time inspectors now.

**Mr Jackson:** For the province?

**Ms Parrish:** Yes. Bear in mind we only inspect in areas where the local municipality does not have its own system, and as you know, in the large urban areas the municipality usually does. So we currently have 34 part-time inspectors. I understand the inspectors get a per diem and then they have an expense, and there are a number of approaches taken to reduce expenditures. For example, we try to choose a property inspector who lives within two hours of the inspected property to reduce travelling time, and that is why we use property inspectors around the province.

**Mr Jackson:** The other part of my question was, do you anticipate an expansion of that service grid, or is the minister satisfied that is sufficient to meet those requirements? The legislation does not specifically indicate that they are essentially contracting out, but you are on record as saying that is part of the current system.

**Ms Parrish:** At the present time we rely upon the expertise which exists within the municipal property inspection work force, and it is difficult to say whether there will be an expansion, because it depends on how far the provincial standard applies. In fact we found that the area of the provincial standard has actually decreased over time because some municipalities—I think you may be familiar, for example, with Burlington—at one time did not have property standards and now do. That is an area where the standard completely covered that area, and then I think



they brought in outside property standards and we no longer did that. I think we still do the interior of the buildings. In fact there has actually been a diminution as municipalities have been convinced to do this for the good of their own people.

**Mr Jackson:** With the exception that in Burlington it is confined to the core area; we do not have a city-wide property standard. It is an outgrowth of the old downtown redevelopment fund as I referenced last week in a commentary. To sum up, the improvement area groups are voting to bail out of improvement areas because of the cost.

The minister may want to check with her counterpart, the Minister of Municipal Affairs, because I believe it is entirely his dollars that are utilized in that area. But my understanding from a few that I have talked to is that they are looking to get out. The question then would be whether the city wishes to continue with that process since it was a precondition of getting those federal and provincial dollars. I just wanted to get a sense of that as opposed to getting into a debate about its merits. I appreciate that information. Could you share that briefing memo from staff with the clerk to distribute to the members?

**Ms Parrish:** I have actually just tabled the letter with the clerk that answers some of these. I can give you some additional information to what I have given you now about the numbers and so on.

**Mr Jackson:** I would, because what I would not want to see is in this period of restraint that municipalities do not make the linkage to this legislation when they are cutting property standards officers and a variety of other personnel on the municipal payrolls. In most municipalities you would see a concentration of rental accommodation, so the councillors who would vote in favour of retaining those because in their minds they have linked it to this legislation may be in a dramatic minority, and residential suburban councillors might say, "We could survive if we cut that department in half." Its implications would be rather dramatic for this legislation.

I would certainly like to make sure that municipalities are aware of the importance of maintenance in this area—no pun intended. We are at some degree of risk in that sense, that by listening to you we are relying on a grid that is in place in municipalities.

**Hon Ms Gigantes:** Yes.

**Mr Jackson:** That is all I am saying. As politicians, we will receive letters from tenants saying, "I got through phase one, I got through phase two, I got through phase three, but now we've got this maintenance problem and I'm told at city hall it will take an inspector six months to get over here." We are not empowered to step into a municipality and say, "Excuse me, you really must go over and take that apartment building and jump the queue and have that inspection done." I am given some consolation when you indicate that at least we can go in and do the interior, but that only is hit or miss if it is the exterior which is the area of maintenance concern or the area of maintenance in dispute.

I have described a situation and you have used the example of my own community and those are the circum-

stances. My tenants are concentrated in two specific wards in my city and therefore they are in a somewhat vulnerable position vis-à-vis all councillors who would be on a cost-cutting crusade. Maybe the minister would like to respond.

**Hon Ms Gigantes:** I take your point very much to heart.

**Mr Jackson:** Then I know it is very close to what is important to the minister.

**The Chair:** Further questions, comments? Shall subsection 36(3) carry? Carried.

Section 36 agreed to.

1040

Section 37:

**The Chair:** On subsection 37(1), as the original bill was presented, are there questions, comments, explanations or amendments? Shall subsection 37(1) carry? Carried.

On subsection 37(2), are there questions, comments or explanations? Shall subsection 37(2) carry? Carried.

On subsection 37(3), I believe Mr Jackson has an amendment.

Mr Jackson moves that subsection 37(3) of the bill be struck out and the following substituted:

"(3) If the landlord who has received an inspector's work order is not satisfied with its terms, the landlord may, within thirty days of the giving of the order, apply to a chief rent officer for a review of the work order."

**Mr Jackson:** That does not change the time frame. It just deals with the issue of flexibility should there be requirements for negotiating certain circumstances that might apply to weather, tenant inconvenience or availability of materials. There are a series of things that would flow as a concern of not only the tenant but also the landlord and this would allow for a certain degree of flexibility. If you wish, we could tighten the language to confine it to those things that are in the minister's opinion helpful to tenants. I merely want to get across the notion that flexibility sometimes means that it works to the advantage of a tenant.

**Ms Poole:** The Liberal caucus will be supporting this amendment. There are a number of time frames within the original legislation that we felt were simply not adequate. One instance dealt with the fact that the legislation automatically defaults to administrative review unless the tenants or the landlord, the other party, applies within 15 days to have a hearing. The government has in its wisdom seen that the time frame was not adequate in that particular case and has proposed an amendment to 30 days.

Mr Jackson's amendment would do a similar thing with respect to giving the landlord an opportunity to dialogue with the inspector and ensure that the work order actually can be carried out. As Mr Jackson mentioned, there are a number of issues involved here. One is the availability of material. The second is inconvenience to tenants who did not want the work done. For instance, if it was work on windows, they might not want it done in the middle of winter. Another extenuating circumstance might be if it was exterior wall work, for instance, and the landlord would need some time.



In these cases the landlord needs an opportunity to negotiate with the building inspector. When these things are brought to the building inspector's attention, he might well change the terms of the work order. What this amendment does is allow 30 days for the landlord and building inspector to have this opportunity, as opposed to 15 days. We feel this is much more realistic.

**Hon Ms Gigantes:** We will not be supporting this amendment. In spite of what has been said by the two members speaking just now, this clause has nothing to do with a landlord speaking to the inspector. Read it again. It says, "If a landlord who has received an inspector's work order is not satisfied with its terms, the landlord may, within fifteen days of the giving of the order, apply to a chief rent officer." This has to do with a landlord's ability, his right to apply to the rent office, to the administration of this legislation, not to the inspector at all for a review of the work order. If the landlord has received the work order and wants to make an application, 15 days is plenty of time in which to do it.

**Mr Owens:** Further to the minister's comments, I agree that if a landlord or property owner is served with a work order certainly he can get his act together within two weeks to decide whether or not he is going to appeal the work order. I do not think it has anything to do with the inconvenience of tenants. My reading of this clause is that it is simply an administrative vehicle for the landlord, giving that property owner a time frame in which he or she can appeal that work order.

**Ms Poole:** What I would point out to both the minister and Mr Owens is it has a great deal to do with the negotiations between a landlord and a building inspector. If a landlord wished to apply to a chief rent officer, it would be paramount for that landlord to have talked to the inspector and made that inspector aware of the difficulties. In fact in a number of cases they might be able to get the concurrence of that inspector. This facilitates that process. Fifteen days for that appeal to occur is simply not an adequate time and that is what it comes down to.

This amendment is identical to what is in the original legislation, other than one word. If I am not mistaken, the only change is that in the Conservative amendment the word "thirty" appears and in the government amendment the word "fifteen" appears. We are just talking about a longer time period to allow those discussions to take place. In fact, one thing that might result from this is that you might not even need that appeal to the chief rent officer. The landlord and the inspector might reach the agreement that a longer period of time could be allocated and that appeal does not even need to take place. We are just trying to reduce the amount of bureaucracy and give a more reasonable aspect to it.

**Mr Mammoliti:** Ms Poole said a longer period of time. I think she hit the nail right on the head in terms of more time wasted perhaps. I am looking at the possible abuse that may take place. I am looking at landlords taking advantage of this consistently to neglect and stall work. That is something I do not want to see opened up.

Putting myself in a tenant's shoes, perhaps I note something wrong in the building, that needs a work order immediately. It takes some time to get that work order and it takes some time to get an inspector out. This would only stall it another 15 days. I see some obvious abuse happening, some stalling tactics. That is why I cannot support it.

**Mr Jackson:** Before we get too fixated on the concept of stalling, I think we should be familiar with the processes that are out there. You are talking about 10 working days, first of all. You are talking about the requirement to go out and get tenders or to get the work done as reasonably as possible. I stress the issues of weather and availability of materials and tenant inconvenience. I do not know how involved you are with your tenants. I presume you are. But getting past all the rhetoric, I can point you to buildings where specifically tenant inconvenience was a factor in the flexibility of when certain renovations were started.

The point I am trying to stress is that you have such tight time lines here you leave the landlord with no position other than to send a recorded letter through his lawyer to the ministry saying, "You have not given me sufficient time for all of this." Do not forget: By definition we have been told by counsel that this is predominantly a rural phenomenon, where we have people coming from Gananoque to go to New Liskeard and we have people coming from Brantford to come all the way to Stoney Creek. These people also are employed by other municipalities and they just cannot drop what they are doing and pick up the telephone and say: "Oh, I'm talking to a landlord. Yes, I did that inspection. You don't like the order? What's the problem?" You cannot take completely all the flexibility out of a system. The truth is, if you tighten it up too much, you force landlords to go into an appeal mechanism.

1050

My question to the minister now has to be, what happens when you get a large number of not failure-to-comply simply, but letters to you from a lawyer, to your ministry, saying: "We're willing to comply, but I have only gotten one quote. Here are the two companies I am trying to get my mitts on so that they will come in and give me a quote"? This is separate from certain matters that have to do with the fire code and so on. I will come back to that point in a minute, because I want to make it clear that these are not all life-threatening issues which deal with safety code standards and fire code standards. I would expect immediate compliance, but I can speak to this committee at length about the flexibility in our current system on those matters.

I am talking about regular maintenance deficiencies that have been allowed to go on too long. They still have to be done by competent people, and not grab the first fly-by-nighter who is available: "Because I was told to do it, I have done it and that should be sufficient." Now you have an appellant mechanism in place for two or three years while we fight over whether or not the right person did the right renovations up to a proper standard. You have created more work.

It is in everybody's nature to potentially put off till tomorrow what can be done today, but I will tell you one



more thing: In this economy, nobody is throwing good money after bad, I mean nobody. If you think landlords are just sitting there scheming how they can simply delay and blow more money—they have a responsibility to their own children, their own families and their own pension plan to make sure they get value for their dollar, because if they do not they will lose the money and, second, they will have to do it over again.

I am sorry, but two weeks dealing with government agencies, especially when this is not an employee who is there at the beck and call of the process—this is somebody who lives in an entirely different community, who is employed by another agency, another level of government. They are apt to say: “Look, don’t bother me. I only get paid on an hourly rate. I’ve earned my money and I’ll hang up on him.” I do not blame them for doing it, unless the government is rushing in to say, “We’ll pay you more money because of all these needs to sit down and discuss the implications of what the decision is.” That is the practical effect of that legislation.

This is my final concern. When it is too tight, and it is on record that it is too tight, and you have so many thrown into that category, you have lost your right as a government to say, “Sorry, we’re bringing the hammer down.” If you give them the 30 days, then you do not have to listen to any crap, because you know you have 30 days, which is so many working days, available to implement those changes.

I may as well get all my points across and then I can yield to the minister because I have asked her a direct question. There are homes for the aged in this province that are run municipally that have been in violation of building code matters and fire safety matters. If there is a fire, a lot of people are going to die, and we are not doing a damned thing about it. I can tell you the actual ones because we have been fighting with subsequent governments, three of them, and my seniors who are tenants, who are in those units—and there is no bogeyman, no bad actor landlords involved here. These are municipally run homes for the aged. They are in serious non-compliance and we have had orders sitting out there. So what is the standard we are telling people: that seniors do not deserve the same level of protection?

The government has a definition of flexibility when it suits it, which is what we are experiencing with our seniors in a lot of these locations, but all of a sudden we do not have one ounce of flexibility. We have a hard and fast rule. People are going to spill over that line, whether we want to say they should or should not, and then we have a bigger mess. I would rather take a tough stand, giving them 30 days, than come back to look at the legislation and say: “We know it is 15 days. We know that is only 11 working days at best, but do your best and we’ll do what we can if you get around to it in 30 days.” For God’s sake, what are we talking about here other than let’s help the system work? When you get an opportunity to participate in that kind of amendment, who is getting hurt? The tenant and the landlord get hurt if we make things so rigid they cannot move. That is all I want to say.

**Mr Owens:** I have to ask the members opposite about their comments with respect to flexibility. How much more flexibility do you want than a clause that starts off, “If a landlord who has received an inspector’s work order is not satisfied with its terms,” and then there is a vehicle for appeal? How much more flexibility do you want? Are you telling me that it takes more than 15 days—that is three weeks of working time, times five days—

**Ms Poole:** No, it is not. It is not three weeks.

**Mr Owens:** —that you cannot get on the phone, through your agent or through yourself and file an appeal?

**Ms Poole:** It is not 15 working days.

**The Chair:** Mr Owens has the floor.

**Mr Owens:** Then you look down to clause (4), which cannot be read in isolation, and see that the inspector’s work order is stayed once an application has been filed. All this stuff about having to do tenders and inconveniencing tenants is not an issue. It is a phoney issue. Once that person gets on the phone and notifies the chief rent officer that there is an appeal, the work order is stayed. It has absolutely nothing to do with inconveniencing tenants or throwing people out in the cold etc. You talk about flexibility; the flexibility is there, absolutely.

**Mrs Y. O’Neill:** I found the minister’s remarks stated in a very condescending manner, and I certainly find there have been very good points placed that give our arguments a lot of substance. I think there is a misunderstanding on the part of the government here of business practice, and I am not surprised about that. There is a misunderstanding about the real world of what is possible and the time lines that are necessary to do business in this province. This province is not Prince Edward Island. It happens to have very large distances between some municipalities—

**Mr Owens:** That is a very astute observation.

**Mrs Y. O’Neill:** —that depend on other municipalities, and the fact that we are talking about time lines has direct reference to those points.

This subsection states the landlord “may”—it does not say “shall”—take 15. We are asking that the landlord may have 30. That, I am sure everyone realizes, necessitates a level of trust on the part of landlords, but it seems to me that every landlord in this province is looked upon as a crook or a criminal in this legislation, and that is why we get letters from people like Minto, from the minister’s own community, that say Bill 121 forces landlords to do business outside Ontario because this government continues to pursue policies that are anti-landlord, and that is not helping tenants. This is another example.

**Mr Owens:** Nice speech.

**Mrs Y. O’Neill:** Of course, your statements on the government side are never speeches. I have made my comments, Mr Chairman.

**The Chair:** Thank you, Mrs O’Neill. Mr Mammoliti.

**Mr Mammoliti:** God knows I have never made a speech in this place.

**Mr Jackson:** The odd nursery rhyme.



**Mr Mammoliti:** Nursery rhymes, yes. Cam, I am serious on this point, because I take this particular point and this particular amendment very seriously. The minister has mentioned the language in the amendment, and I agree with the minister. It says the landlord will "apply to a chief rent officer for a review of the work order." What does that mean? What does a review mean?

**Mr Jackson:** It means everything that has to do with a review.

1100

**Mr Mammoliti:** How much longer can it be stalled if this review—

**The Chair:** Through the Chair, Mr Mammoliti.

**Mr Mammoliti:** Sorry, Mr Chair, through you—if the review includes everything—just that, everything—above and beyond what you have mentioned here in terms of tenders and in terms of the time it takes for a contractor to come out and all that? How much more time are we looking at? What does a review mean? I think it should be a little more specific if I were to look at it.

In terms of tendering, Cam, through you, Mr Chair, you mentioned that tendering is important. Let me just say that not everything is done by tender and not everybody exercises that process. You mentioned maintenance. It does not mean that everything is done through tender. It could be a smaller item, Cam. Let me say to you that there are mechanisms and ways of dealing with maintenance that do not come under that tender process. A lot of landlords have an operating list of contractors who could come out to the site immediately to do that work. Inspectors know of those individuals as well.

The other point you brought up was that an inspector or an officer cannot answer a phone and deal with an appeal immediately. I say to you, why not? Why can they not answer the phone? Why can they not deal with that particular landlord immediately? If you are saying to me that two weeks is not enough because they are just too busy, I can say to you, through the Chair of course, that I am concerned. If a tenant organization gets hold of me and says, "Look, this guy's sitting on his butt," I think it is my obligation as a member to find out what that officer is doing. I think the onus is put on us as well to do a little bit of homework as members in this particular case.

**The Chair:** I have the minister, Mrs Poole, Mr Owens and Mr Jackson.

**Hon Ms Gigantes:** How much discussion over 15 days? I think there is a principle here, and it is a principle which the opposition is confusing.

**Mr Jackson:** Oh, come on.

**Hon Ms Gigantes:** I will explain what I mean. This clause says that there is a relief valve for a landlord, and it says the landlord has to use that relief valve in 15 days.

**Mr Jackson:** Exactly. It means most of them are going to use it. That is my point. I am trying to reduce the pressure on that system. If you will forgive me, Mr Chairman, just a subquestion to the minister: You have civic employees from another—

**Hon Ms Gigantes:** Excuse me, Mr Chair.

**The Chair:** Ms Gigantes has the floor.

**Hon Ms Gigantes:** We have also had an explanation from the opposition about how we do not understand the real world, how we do not understand business practice, how we do not understand the size of Ontario. It has nothing to do with that. Read the clause. It says if the landlord has received a work order and does not like it, he may apply within 15 days to have it reviewed by the chief rent officer. All we are asking the landlord to do is to take 15 days and consider whether he thinks that work order is one that reasonably applies in his or her case.

**Mr Jackson:** Those are the only grounds.

**Hon Ms Gigantes:** That is all we are asking in this clause, and we are offering relief.

**Mr Jackson:** Right, and everybody is going to take it.

**Hon Ms Gigantes:** We are offering relief through subsection (4), which follows, which says that there can be a stay while the rent officer looks at the request for a review. What has been suggested by the opposition is that somehow we are asking landlords to get the work done, to get all their tenders in, to make a decision about who is doing the work, to get it under way, all this kind of stuff. We are not asking that at all. We are asking the landlord—

**Mr Jackson:** Read the section.

**Hon Ms Gigantes:** Mr Chair, I wonder if Mr Jackson would do me the kindness just to be quiet while I am talking, as I was when he was talking.

**The Chair:** I am certain all members realize that interjections are out of order. Ms Gigantes.

**Hon Ms Gigantes:** Thank you, Mr Chair. We are not talking here about compliance. We are not talking here about getting tenders in. We are not talking here about indications of good faith or progress on the part of the landlord. What we are talking about is an indication of good—

Interjection.

**The Chair:** This is not helpful. If we could just have one member speak at a time. Minister.

**Hon Ms Gigantes:** What we are talking here is the good faith of the administration of this legislation, the chief rent officer, who can be called upon by the landlord to take a look at the terms of the order. The landlord is going to call in and say, "Look, I'm not satisfied with the terms of my order," and there is a stop on that.

All we are saying is that the landlord has to call within two weeks, 15 days. That is not asking a whole lot. What it does do is cut down the period, which everybody knows, for some quite serious problems with some difficult situations in terms of the landlords we deal with—and they are not just rural landlords. I will come back to that in a moment. What this does is insist that landlords are going to have to get their business practice together so they can make up their minds within 15 days whether they are going to ask for a review of the terms of the work order. They are guaranteed a stay if they do that.

Mr Jackson suggests that of course he is doing all this as a great big favour to the administration of this legislation. It is going to stop landlords from frivolously or too



quickly putting in an application for a review of the terms of the work order.

I think on balance we feel that the need of tenants for a system that actually gets work done which needs to be done and for which there should be a reasonable expectation that it is done in a reasonable time, the balance that is required there does not argue in favour of giving the landlords another 15 days to decide whether they are going to ask for a review.

This is not a heavy matter. They have to decide whether the terms are acceptable or not. They have to decide whether they are going to call up a rent officer and say: "Hang on. On this particular work order, I want a review. You give me a review."

There has been—I do not know if I would say it is—no, I will not. There is a confusion in the words that have been put forward here on this motion, on this amendment by the opposition, between the question of getting the work order into the system and getting it worked on and a review process of that work order and getting the work done. Those are two different things. They cannot mush them together at all.

In terms of the application, here we are talking about people who have to go 50 miles for inspections, and it is hard to get hold of the inspector if you are not happy with the terms of the work order and so and so and so. We have heard a lot about that. The fact is that most of the rental units we are dealing with under this section, which is the section where provincial standards are being applied, are not somewhere out in the boondocks of Ontario. We are talking suburban areas with large numbers of rental units in major urban centres. Unfortunately, we are talking about fairly large municipal entities where there is not a satisfactory municipal building inspection service.

If the landlord wants to talk to the inspector, in most cases it will not be difficult, and certainly the landlord should be able to make contact if it is advisable to speak to the inspector, and perhaps discuss the terms of the work order first. We are not talking long-distance calls of 2,000 miles. I think we tried to make that obvious when we described who we use currently and will continue to use in making sure that these sections of the bill are properly implemented.

So having listened to all the arguments, some of them very confused and totally off base, of the opposition on this question, I feel more than ever that 15 days is what we need, not 30.

1110

**Ms Poole:** In answer to something Mr Owens has brought up, I would like a clarification from the minister or from Ms Parrish. From my interpretation of this section, 15 days is very clearly not 15 working days. It would in fact be 10 working days. Could we please have a clarification?

**Hon Ms Gigantes:** It is 15 days of the month, calendar days.

**Ms Poole:** So that would include weekends and holidays and whatever.

**Hon Ms Gigantes:** That is correct.

**Mr Owens:** It boggles my mind that a person cannot get his or her act together to decide whether or not to appeal a decision within the 15-day period. Mr Jackson alluded to an interesting point. I am not sure about the municipalities the members opposite live in, but in my municipality the problem is in fact not the compliance with a work order but having the property standards person actually issue a work order on the building. I can think of several buildings, some of which have the province as landlord, where people are forced to live in appalling conditions and yet the property standards officers are loath to issue orders.

In terms of the flexibility of this clause, as the minister quite accurately pointed out, there is confusion as to what the intent of this clause is. It is simply to provide an administrative vehicle for the landlord or the property owner to have an appeal. Again, if you move down to section 4, the order is stayed. Again, in terms of flexibility, it does not even say that the application for appeal has to be a written application. I am presuming, with the language currently there, that I as a landlord, if I wanted to appeal, would simply have to call the chief rent officer, indicate that I am going to appeal and again the order would be stayed. Unless Colleen can tell me differently, I am assuming that is the kind of process that would take place.

**The Chair:** Clarification of your comments would be helpful to the Chair.

**Mr Owens:** Sure.

**Hon Ms Gigantes:** The procedure within the bill, Mr Owens, would require an application in writing.

**Mr Owens:** But at this point, in terms of the clause, if the landlord notified the landlord on day one and then followed up with written documentation, would that not keep that—

**Hon Ms Gigantes:** It has to be within 15 days and a written application.

**Mr Owens:** Within 15 days. Thank you. So end my comments.

**Mr Jackson:** I have to go back to the points I was stressing. It could be the landlord is willing to comply but it is physically impossible, as he indicates, for a variety of reasons. What I am suggesting is that we are literally forcing people to go into the appellant mechanisms. So let me ask some questions about how the appellant mechanism works.

First of all, these inspectors do not work in the jurisdiction to which the application applies. They are coming from another community. According to this memo, they are supposed to be doing this work during evening hours, weekends and during their statutory holidays.

**Hon Ms Gigantes:** Right on.

**Mr Jackson:** If that is the case, then you have the government's doors open during regular business hours but the substantive work being conducted is occurring after hours. In fact, my concern about working days is even more amplified now when I revisit this, because the working conditions and working day of the inspector is far,



far less than 10 or 11, or even if we stretched it, 12 working days out of the 15.

What I am concerned about is, are these inspectors involved in any way in the appellant process? In other words, will the director have to contact the inspector to go over certain matters? Is this simply a paper process, or is there a gathering of the minds? Perhaps I will stop, since you are briefing the minister.

**Hon Ms Gigantes:** You go ahead.

**Mr Jackson:** I will give you all my concerns, because I want to set out the scenario as I understand it, and that may be the flaw in my thinking. If you have an autocratic approach where the director looks at two written pieces of paper and says, "The hell with you," boom, and the gavel comes down, then that is not a big process for government.

But if we are taking an employee from another community, say, if my inspector in Burlington has to take a day off work to go to Brantford to sit through a series of appeal hearings that flow from his inspection work in that city, then I have some concerns, because they are not actually inspecting. The parallel is how productive policemen are sitting around all day long waiting to get on in a court proceeding when they should be out there watching for bad people but are not and are instead sitting in a courtroom with some judge who puts things over and over and over. I do not want an employee in my community sitting at the regional offices of the ministry.

Without going over that at length, I would like to hear from you the details of how the appellant process works, because I am convinced that with these short time frames, if an employee is not in the office, you now have to phone him or her at home. Do we give the landlord the home phone number of an inspector? That is an absolutely critical question here. You are saying he or she is on the job and cannot be harassed at work, that he or she is available to be contacted. I would like to get some clarity on this.

I am convinced that landlords will simply say, "I cannot get clarification that I can get the work done in a certain time frame, because my appeal process is limited to two weeks and I cannot get anybody to assure me or contract with me that it will get done." He is not saying he does not want to do it. That is a whole other issue and the government has every right to say, "We are not listening to that." What we are talking about is that he physically cannot get the work done because there is nobody in the community willing to do it. If the landlord does get somebody to undertake it, he is liable if the contractor did not do it. The landlord can sue the contractor because the contractor assured him it would be done.

Landlords, whether a small landlord with life savings tied up in a six-plex or a major corporation, all will have a legitimate claim to say, "To protect myself, I have to appeal." When they get into appeal, they say, "These items I was concerned about I have now been able to address, so we can proceed." But I do not think landlords will do that. I think landlords will say, "Now I am into the appeal, if the ministry is not hearing these appeals very quickly, I have lots of time."

Technically, the best way to approach this is to say: "Here is the limited range of issues you can appeal, that you cannot comply with the work in the prescribed time, those kinds of things. Otherwise, damn it, there is going to be compliance." Otherwise it is just too loose and too open and it will be the subject of abuse. Either that, or just say, "You have two days to appeal it." Then everybody goes into appeal. But that is the net effect of this.

I would like some answers as to how these municipal employees in other communities are involved in the appellant process, if the landlord has the right to come and present his or her documentation to the director, if the tenants are allowed a representative in that process. These are the kinds of questions. We have a hairy infrastructure of sitting down and meeting, and the Statutory Powers Procedure Act applies. I am telling you we have created more of a problem.

Those are the areas of my concern and they have little to do with the concerns the minister might think she is hearing.

1120

**Hon Ms Gigantes:** I do think Mr Jackson's concerns about what he is describing as an enormously complex appeal procedure are off base. I would ask Colleen Parrish just to comment on how this process will work.

**Ms Parrish:** The landlord receives an inspector's work order and usually inspectors do make an effort to talk with the residents of the building and the landlord to ascertain what the problem is. But at some level the inspector makes a decision that X should be done and says when. The landlord receives the order. They disagree either with the what or with the when.

**Mr Jackson:** And by when.

**Ms Parrish:** They have 15 days to say they disagree with this. When they say in writing that they disagree, there is an absolute stay of their order. The person they are dealing with is the chief rent officer, who is an employee of the ministry and who is around during working hours. That is the person who arranges for a rent officer to have the hearing. The rent officer is also an employee of the ministry and also has the hearing.

Whether it would be necessary to call the inspector as a witness would depend in part on what was in dispute and whether it was necessary to call the testimony of the inspector. It may very well be there was nothing disputed. The landlord could say: "I agree with everything the inspector says. I just want more time." They have evidence from their contractor that they cannot do it, or whatever. It depends on the circumstances.

There is the opportunity to have a hearing. If the landlord wants an extension of the term or wants to dispute whether he or she should have to repair X, Y or Z, there is the opportunity to have that matter heard under a provincial work order, just as there is that opportunity to have the issue heard at a municipal level. For landlords who are in communities that do not have municipal standards, this gives them the same due process protections as they would have if they were in a municipality that imposed property standards directly.



The inspectors may have to come for a hearing. Again, it is going to depend on the circumstances of the case. It is quite common when you deal with small landlords in particular that they will request an evening hearing. We would try to accommodate them because many small landlords have work outside their landlord responsibilities and so, whenever possible, we would try to accommodate it. That might be also convenient. As I said, we try to use inspectors who are within two hours of the building so we are not flying them all over the province for hearings or anything else.

That is the process. There is obviously a desire to make this as expeditious as possible because there is a stay during this entire period of time. If the landlord is appealing solely for the purposes of delay, that is problematic.

**Mr Jackson:** Do we have any sense of how long these stays last? Is your ministry monitoring them at all?

**Ms Parrish:** We do not have the same system now.

**Mr Jackson:** No, but you have a variation of it.

**Ms Parrish:** Yes, we have a variation, but it is so substantially different it is very difficult for me to extrapolate because, under the current system, there is a two-tiered approach. There is quite a bit of time lag that relates to that. I understand it is as much as a year under the current system, and that is not fast enough.

**Mr Jackson:** I did not get an answer to two questions I asked. This is not a regulation, this would be an operating procedure, a guideline from the ministry. Would you routinely share the home phone number of this hired inspector from another jurisdiction to facilitate access, whether it be with ministry personnel, the landlord or any contractors? Frankly, some of these inspectors would be put in touch with contractors. Landlords would say: "Don't look at me as a landlord. Talk to this contractor." The inspector would have every right to discuss that.

There was one other question I did not get an answer to. I am sorry: I have missed it.

**Ms Parrish:** We usually give the individuals a person to contact and it is usually not the inspector. It is usually the person who manages the inspector, in this case the staff of the standards board, but under the new system it will be staff of the director of rent control so that if people just do not understand the order—it is not whether they want to comply—if they just want to ask questions they can talk to that person. That person is in the office full-time and can help to troubleshoot.

**Mr Jackson:** My final question just reoccurred to me. Does the tenant have any rights in the appellant process if there are negotiations occurring? If you look at the plea-bargaining model, the victim is never in the room. If there is an agreement to change the original order in any way, to what extent do you facilitate the participation of the tenants and the landlord? You have answered the issue of the inspector's attendance.

**Ms Parrish:** It is quite common in these situations that the tenants are called as witnesses to deal with issues like inconvenience or how difficult their life has been made as a result of this. There is always a certain discre-

tion involved here. Sometimes tenants do not want to be called as witnesses because they do not want to be involved in conflicts with their landlord. Similarly, they may not want to take time off work or whatever. There is some discretion about whether you call these people as witnesses.

They can also write letters, which they do. Their letters then become part of the public file. If they want they can intervene directly, but usually they come as witnesses. Then there is some attempt to be sensitive to the concerns of the tenants as to whether they do or do not want to be witnesses.

**Mr Jackson:** My fear is that we are not talking about the appellant mechanism here. I think you have just described the process that precludes it which leads to an order—I should not say an order—which leads to an inspector and a work order for compliance.

**Ms Parrish:** It could equally apply to a situation where the landlord indicates that he wants a review of the work order. Then there has to be a hearing. At that hearing, the tenants could be witnesses as well.

**Mr Jackson:** That is what I was waiting to hear, that if they have a hearing the tenants would be notified that there has been an appeal, that the work order they are anticipating compliance with at the moment is in a stay and that during the stay there would be a hearing subsequently and they can participate. I just wanted on the record that this is what my tenants can anticipate.

**Ms Parrish:** We have the ability to pass procedural regulations that would set out whether there would be notice given in every case. We are going to be consulting on those procedural regulations letting people sort of find out.

There is always a certain sensitivity here, because the work order that is being enforced is the work order of the province.

**Mr Jackson:** I understand that.

**Ms Parrish:** The tenants have an interest in the enforcement of the work order, but in the end it is not like other disputes which are between the landlord and the tenant. In this case, the parties to this particular dispute are the province upholding its standard and the landlord who in the view of the province has breached the standard.

You could have procedural regulations that say the tenants must be informed. Sometimes that is difficult because you do not know who they are. You can provide for other forms of notice, such as posting in the building, because you may not know who they are if there has not been a process, or you can call the tenants as witnesses. Sometimes they prefer that because they do not want to be parties for a number of reasons. They prefer to be witnesses and not parties—exactly how we should make that work in a way which is fair to landlords and tenants and which is sensitive to the desire of some tenants not to be embroiled in a dispute between the province and the landlord.

**The Chair:** I have Mr Winninger, Mrs O'Neill and Mrs Marland on my list. Mr Winninger, you have the privilege of being the 15th intervention on this clause.



1130

**Mr Winner:** I will be brief but hopefully to the point. I think it might have swayed some of the concerns of the opposition members to make reference to section 58. It does not refer to subsection 37(3) specifically, but it provides for the discretion of the rent officer to extend or abridge the time for making applications. A rent officer may extend the time for doing something even if the time for doing it has already expired, and may abridge time for doing something even if the time for commencing it has passed.

At that time, under section 58 the rent officer has to give all affected parties written notice of an extension or abridgement of time, and if the rent officer extends or abridges time, he has to notify the parties by the application of the new filing date and of any resulting new times for making submissions.

I had some concern that this section may not apply to work order situations, but I have had some informal consultations and I am advised that the same rules apply. So the landlord who might be a victim of extenuating circumstances—he may be out of the country at the time that the work order is issued and need additional time—can rely on section 58, I would submit. By having that short 15-day time period we set down a standard by which a landlord has to respond to the issuance of work orders, but at the same time, in needy circumstances, where extenuating conditions prevail, a landlord can fall back on section 58. I would suggest that should increase the comfort level of landlords who may feel unfairly dealt with under section 37.

**Mrs Y. O'Neill:** I indeed have found Mr Winner's remarks very helpful, in contrast to misunderstandings from another government caucus member, who is suggesting it is 15 working days and a non-written application. I feel good about what Mr Winner has just said, because those are the kinds of things I was talking about as not being part of the real world. People who are landlords take extended vacations sometimes or go to visit other homelands. Sometimes landlords also want to consult with their advisers about a major outlay they may have. They may have to wait to get appointments with these people. Anybody who has had anything done, whether to a residential or a commercial building, knows it is not always possible to get an appointment the day you want it.

I also find that normal business practice on this kind of measure is usually 21 days and often 30 days. That is the basis upon which my statements were made. I still believe that this kind of clause, unless it is backed up by section 58 or some reference is made, does create an atmosphere where business people in this province feel somewhat harassed or feel they are not understood. Their limitations are there. They are built into their lives. This bill applies both to large and small landlords. I feel that somehow, I hope in the Hansard at least if not in a more direct way, we can indicate that section 58 would help us in the administration of our section 37.

**Mrs Marland:** I would like to thank Ms Parrish for the letter this morning responding to the questions I

brought up yesterday about who the part-time people were and how they were doing their work. I think the answers are relevant to this section, because we are talking about how this section would work.

I would like to ask one question of the minister. The second paragraph describes who these people are and how they work on a part-time basis and conduct inspections on weekends, during evening hours and when on vacation from their full-time jobs. Can you tell me whether the ministry obtains permission from their full-time employer to do this part-time work? Do you have that answer, Madam Minister? I guess you do not.

**Ms Parrish:** This is done under the auspices of the standards board and therefore it is not directly the responsibility of the ministry. I understand that the standards board requires the individuals to deal directly with their own employers. I cannot answer in any greater detail than that. I do not know personally.

**Mrs Marland:** So we do not know if these people are moonlighting.

**Hon Ms Gigantes:** They are moonlighting.

**Mr Jackson:** Yes, they are moonlighting. It says right on it.

**Ms Parrish:** I am not sure what moonlighting is.

**Mrs Marland:** Moonlighting, as I understand it, is when you work at one job while you hold another job without telling your full-time employer that this is what you are doing.

**Ms Parrish:** I know the individuals are certainly urged to negotiate with their employers and work this out. I understand some municipalities are quite supportive of this, because they feel that they have an interest. For example, where they are a city and there is a regional municipality surrounding it, they see some interest to them as a municipality in having a standard set and so on. I cannot speak for the standards board. There is no indication, as far as I know, that these people are doing anything improper.

**Mrs Marland:** Do you know if OPSEU approves of this contracting out?

**Hon Ms Gigantes:** These employees would not be OPSEU members.

**Mr Jackson:** It is in the principle.

**Hon Ms Gigantes:** Mr Chair, if I could just for a moment, the people Mrs Marland is talking about are a fairly small circle. This is not the kind of skill and employment which every person on every block of every street has. People in the business, if I can put it that way, of building inspection all know each other and all deal with each other frequently on matters of mutual concern. They have, through our ministry, met on a regular basis to upgrade their skills and share information about their profession. If there is a problem in terms of the employer, it certainly is not a problem which would remain unresolved very long. You do not inspect buildings in a furtive way.

**Mr Jackson:** What does that mean?

**Hon Ms Gigantes:** I mean that the employer is going to know, Mr Jackson, so this whole question of whether



the employers are going to feel that their employees' time and skills and energies are being stolen, which is somehow being suggested by your colleague Mrs Marland, is exceedingly unlikely.

**Mrs Marland:** Honestly, Minister, you are unbelievable at times. I take exception to your suggesting that I am saying something is stolen. It is very interesting your saying—

**The Chair:** Perhaps the minister would withdraw that choice of words.

**Hon Ms Gigantes:** No, Mr Chair. If I could explain, I did not mean to suggest anybody was stealing. When Mrs Marland suggested that the employers might not know what their employees were doing if they were taking contract work through our Ministry of Housing to provide inspections in neighbouring municipalities, I suggested that there was no question of furtiveness, of stealing the energy, efforts or talents of those people. I do not think I am impugning anybody here.

I am suggesting that what she is trying to suggest is really quite off base. This is a coterie of professional people, all of whom know each other very well in every municipality, in every region of Ontario. It is a brotherhood and sisterhood. I do not know how many women are actually employed, but these people know each other well and they deal with each other frequently. What she is suggesting about their employer somehow being deceived or unhappy about this process is really highly, extremely unlikely.

**Mrs Marland:** Mr Chairman, it is wonderful to have this minister on record with these last two minutes of diatribe, because you see what she has just said proves that she again does not have a clue what is going on.

1140

**The Chair:** I would ask that members try to refrain from being unnecessarily provocative and that we speak to the issues directly.

**Mrs Marland:** All right. I am only following the example of the minister.

**The Chair:** I was cautioning all members, Mrs Marland.

**Mrs Marland:** Instead of saying that, I should say "sufficiently uninformed." I am asking if these people carrying out work as a result of a provincial mandate, a provincial piece of legislation, are doing it with the permission of their employers. When the minister says: "Of course, they all know each other very well. There aren't that many of them. They are specialists in their area and they know each other in this region and that region," it begs the question: If that is the case, why are we bothering to send them out of their regions to do the work? You cannot say one thing on the one hand—Ms Parrish has very carefully explained that these people work outside their area.

**Hon Ms Gigantes:** That is the only place they are needed.

**Mr Jackson:** No, they are needed in their own community.

**Mrs Marland:** I would suggest if that is the only place they are needed, they would not have a job in their

own community in the first place. What kind of an answer is that?

**Hon Ms Gigantes:** The only place they are needed—

**Mrs Marland:** I think I have the floor, Mr Chairman. The fact is, if we are saying these people have full-time jobs and are working evenings, weekends and on their vacations, do their full-time employers know about this? What is the answer?

**Hon Ms Gigantes:** It would be impossible for them not to.

**Mrs Marland:** It is impossible for them not to. How would you suggest they know?

**Hon Ms Gigantes:** I just explained to you.

**Mrs Marland:** Take the example of the person paid by the taxpayers of Brampton.

**Mr Jackson:** And inspecting in Stoney Creek.

**Mrs Marland:** —and inspecting in Burlington, Stoney Creek, Halton Hills and Caledon. How do the taxpayers of Brampton, through their municipal council, know this individual is working in these other municipalities? I would suggest that Burlington, Stoney Creek, Halton Hills and Caledon have building inspectors of their own, so why are you suggesting their employers know they are working elsewhere when it is in off-hours, weekends and vacations? How do you know that?

**Hon Ms Gigantes:** First of all, to deal with the question of whether they would be required in Burlington, Stoney Creek etc, those municipalities do not have property standards officers. That is what we are addressing here, Mrs Marland.

The second matter is that most building inspectors working for a municipality report to somebody. The person they report to will know the business they are in. The person they report to will know the business of building inspection in other municipalities and will know perfectly well that the employee is involved in work in other municipalities. If it were the intent of an employee in this situation to keep this extraterritorial work secret, I suggest, Mrs Marland, that in all practical senses it would be virtually impossible.

**The Chair:** Thank you, Mrs Marland. Just to be helpful, I think we should try to focus our discussion as much as possible on the issue raised by the amendment. The issue raised by the amendment is only one word, and that is the time element. I realize these other things are important, but we have had a rather full and wide-ranging discussion.

**Mr Jackson:** On a point of order, Mr Chairman: I am not challenging your ruling, I simply want to suggest that in the process of this discussion we are uncovering for the first time that the activities of these individuals go beyond this 30- or 15-day period. If we are just discovering that, I can assure you that the employers the minister and my colleague are talking about are not aware of it. There is a series of additional questions we would like to place on the record which deal with the concept of just how much of this clause flows as an expense to a local municipality. I think we are very much on topic. We will try to keep our



comments brief, but we find it important that we get a couple more concerns on the record briefly.

**The Chair:** I appreciate that, Mr Jackson. I was trying to understand that this is a broad-ranging topic. I was just pointing out that the difference between your amendment and the government's amendment is simply one word and that in our amendment you are also talking about inspectors. I was not making a ruling, I was just trying to be helpful.

**Mrs Marland:** Mr Chairman, I appreciate your being helpful. I think it is important to note that the matter we are discussing is in response to a matter I raised yesterday. I am simply responding to the answers we got from the Ministry of Housing yesterday.

When we are dealing with these inspectors working on a part-time basis in jurisdictions other than the jurisdictions in which they are employed full-time, it raises a number of very pertinent questions. I would like to ask the minister, since she cannot seem to confirm that there is any formal communication between the standards board and the employer—she is saying the employer must know because these people are working in the adjacent communities. I think I will have to ask the minister just once more and see if I can get a direct answer. Do the standards board staff that employ these inspectors ask permission of their full-time employers?

**Hon Ms Gigantes:** I do not have a knowledge of the practice of the standards board as it currently operates on this question.

**Mrs Marland:** The standards board, I understand, is going to be disbanded. Is that correct? Can you tell us how this work will be done in the future and to whom these part-time staff will report?

**Hon Ms Gigantes:** The part-time staff will report, through the administrative sections of this legislation, to the director of rent control.

**Mrs Marland:** So these part-time people are now going to be employees of the Ministry of Housing, correct?

**Hon Ms Gigantes:** Yes, they will be on a part-time basis.

**Mrs Marland:** Do you plan to get permission from their full-time employers for them to work for you?

**Hon Ms Gigantes:** No.

**Mrs Marland:** You do not. You are just going to hire them on a contractual basis to work evenings, weekends, and in their holidays and you are not going to ask their full-time employers if that is okay.

**Hon Ms Gigantes:** I do not even know if all the people being hired as inspectors—and this question may be relevant to ask—are actually employed full-time. They may well be retired. I certainly know of people in the Ottawa area who have retired and who would make very good inspectors in this kind of process.

One cannot expect the employees involved, who are employees of municipalities, to make arrangements with

their employers about this work which would be reasonable. I do not think everything in this world has to be regulated through this bill.

**Mrs Marland:** Do you know if they use in this part-time work people employed elsewhere, not retired people? Even if there is one full-time person, this response would indicate perhaps that they are working elsewhere and that is why they have to do their work on weekends, evenings and holidays, I would suggest. If they are working full-time, that would hardly be a description. It says, "when on vacation from their full-time job." Do you know, when they do this work, if they are using their own vehicles or ones belonging to the municipality that is their full-time employer?

**Hon Ms Gigantes:** No, I do not know that and I would suggest that at some point, one has to trust to a level of common sense and an understanding of the employee-employer relations which may change from municipality to municipality. I see no reason for the Ministry of Housing to make a decision about how an employee relates to an employer who from one area of the province to another may have quite different rules and regulations around all these matters.

**Mrs Marland:** Well—

**The Chair:** Mrs Marland. It has been brought to my attention that a subcommittee meeting would be useful about now.

**Mrs Marland:** I am about to finish. I only have one minute left and I am finished.

**The Chair:** We could do it this afternoon. I am not trying to cut you off. I am just trying to allocate the time.

**Mrs Marland:** I might as well finish it. In closing, I want to assure the minister that I will be forwarding to all the municipalities, through AMO, the Hansard from this deliberation this morning about how the Ministry of Housing chooses to use full-time staff to do work on a contractual basis as a part-time job without notifying the full-time employer.

I know, speaking for my own municipality, that there will be—when we are talking about the cost of government today and we are saying to one municipality, "It's okay if your staff decide to work evenings and weekends and are too tired to do their full-time jobs which is their primary responsibility as employees of the municipality." I think this is pretty significant, particularly because the minister does not know how it has been managed and she has been in government for almost 18 months now.

**The Chair:** Thank you. Shall Mr Jackson's amendment to subsection 37(3) carry? All in favour of Mr Jackson's amendment? Opposed?

Motion negatived.

**The Chair:** The committee will adjourn until 2 o'clock this afternoon.

The committee recessed at 1152.

## AFTERNOON SITTING

The committee resumed at 1404.

## SUBCOMMITTEE REPORT

**The Chair:** The standing committee on general government will come to order. The first order of business will be to deal with the report of the subcommittee. I believe all members have a copy of the report of the subcommittee on their desk. I will give people a moment to read through it. If members have comments, I would like to know about that. If they do not, I would appreciate someone moving that the report of the subcommittee be adopted.

**Mr Abel:** I so move.

**Mr Jackson:** You can move adoption, then I wish to discuss the motion.

**The Chair:** Okay. Mr Abel has moved the adoption of the subcommittee report. Mr Jackson?

**Mr Jackson:** I just wanted some clarification relating to the cross-border shopping and the child care. It is my understanding that we were going to deal with one and not the other. Am I under a misunderstanding?

**The Chair:** The committee has I believe three hours on the cross-border shopping issue.

**Mr Jackson:** To complete.

**The Chair:** To complete, and then we will be moving to the child care issue. Does that clarify it?

**Mr Jackson:** It makes sense too. That is wonderful.

**The Chair:** Unusual, perhaps.

**Mr Jackson:** No, it is good.

**The Chair:** Further discussion?

**Hon Ms Gigantes:** Could I ask a question, which I guess relates to how we wrap up our work on Bill 121? During earlier discussion in this committee, we had a number of questions, presented primarily by Mrs Marland, concerning the duties and the hiring procedure for rent officers. At the time, I suggested to Mrs Marland that when we got to part IV of the bill I would be glad, if it were of interest to members of the committee, to ask knowledgeable people from the ministry to be available here to provide some information and to answer some questions about rent officers and how we plan to hire and mandate them. I do not know if that is of continuing interest to the committee. If it is, then I think we should probably try and make sure that we have the appropriate people here from the ministry, but I would welcome guidance on that. Perhaps we would like to set a time period within our work.

**The Chair:** That is a valuable suggestion and I am sure we are looking for some clarification, but I suggest that the whips for each of the parties discuss this issue informally and bring forward a suggestion. I note that there are some members not here at the moment and they might like to have some input into it. But to facilitate that, I would suggest some informal discussions could perhaps solve it.

**Hon Ms Gigantes:** Could I suggest that we might want a proposal that would say exactly what time and

perhaps for how long we would call upon the specialized ministry staff.

**The Chair:** I think that is a reasonable suggestion and I am sure that the parties can come to some agreement informally and let us know. Mr Jackson, did you wish to comment?

**Mr Jackson:** I do not think it is a matter subject to party agreement. The request of the member was conceded to. The member's interest is still there. It simply becomes a matter of scheduling time.

**The Chair:** Exactly.

**Mr Jackson:** I would leave it up to the minister and the Chair to arrange that, but to get into discussions which almost imply negotiating this time—in this we do not want to participate. We simply wish to have someone come forward and share simply, cogently, quickly, the information which was sought, and I do not wish to make it more complex than that. The minister was kind enough to come forward and offer a legitimate request, which is, when would you like this to occur? We would be able to arrange that through Mrs Marland and we should be able to resolve this before the end of today. I thank the minister for getting guidance on that, but I do not wish to get into whole hairy discussions.

**The Chair:** I think your suggestion is quite acceptable and I believe that is really, in truth, what I was attempting to articulate. Fine. Further discussion?

Shall Mr Abel's motion that the subcommittee report be adopted carry? Carried.

Motion agreed to.

1410

## RENT CONTROL ACT, 1991

## LOI DE 1991 SUR LE CONTRÔLE DES LOYERS

Resuming consideration of Bill 121, An Act to revise the Law related to Residential Rent Regulation / Projet de loi 121, Loi révisant les lois relatives à la réglementation des loyers d'habitation.

## Section 37:

**The Chair:** Now we revert to our discussion on subsection 37(3). Is it the pleasure of the committee that this section carry? We have had extensive debate on the amendment to this. Shall subsection 37(3) carry? Carried.

**Hon Ms Gigantes:** We had an amendment. Did we vote on the amendment? Yes. That is great.

**The Chair:** Subsection 37(4), questions, comments, amendments?

**Ms Harrington:** Mr Chair, did we vote on Mr Jackson's motion?

**Hon Ms Gigantes:** I asked too.

**The Chair:** Yes, we did.

**The Chair:** Shall subsection 37(4) carry? Carried. Shall subsection 37(5) carry? Carried.

Section 37 agreed to.

Section 38:



**The Chair:** There is a government amendment. Actually there is a government amendment to sections 38 through 41. I believe it is as printed. Is that correct, minister?

**Hon Ms Gigantes:** That is correct. We also have an amendment to add section 38.1.

**The Chair:** We have a government amendment, section 38.1.

**Hon Ms Gigantes:** The government amendment falls in at subsection 38(3). Perhaps we would like to deal with these matters in order.

**The Chair:** All right. We will deal with subsection 38(1). Questions, comments? Shall subsection 38(1) carry? Carried.

Shall subsection 38(2) carry? Carried.

**Hon Ms Gigantes:** Can I ask where 38.1 fits in?

**The Chair:** It will fit in before we go on to section 39.

**Hon Ms Gigantes:** Very good.

**The Chair:** Now we are dealing with a government amendment to subsections 38(3), 38(4) and 38(5).

Ms Harrington moves that subsections 38(3), 38(4) and 38(5) of the bill, as reprinted to show the amendments proposed by the minister, be struck out and the following substituted:

“(3) Subject to section 38.1, the order is effective 30 days after it is issued.

“(4) The order shall contain,

“(a) the municipal address or legal description of the rental unit or residential complex affected;

“(b) reasonable particulars of the work order that is the subject of the order prohibiting the rent increase; and

“(c) the fact that the order prohibiting the rent increase is effective 30 days after it is issued unless it is stayed or rescinded before that time.”

**Ms Harrington:** Mr Chairman, these are technical amendments that result from the amendments made by adding section 38.1, which I believe we will be doing. They provide that an order prohibiting rent increases is effective as of 30 days after the order is issued unless it is stayed or rescinded.

**The Chair:** I believe I have a Conservative amendment.

**Mr Jackson:** Actually, on file with the clerks and the committee is a series of three amendments. Counsel to the committee has been up to her exceptional efforts and has assisted in developing another amendment. I will read that and I believe it will be circulated. Disregard the three; these have been blended.

**The Chair:** Mr Jackson moves that the government motion to amend subsections 38(3), (4) and (5) be amended by striking out “30” in the first line of subsection (3) and in the second line of clause (4)(c) and substituting “60” in each instance.

Do you have an explanation for your amendment?

**Mr Jackson:** Reference was made earlier today to the notion of time necessary for completion. I recognize the effect of the minister’s amendments, but I still submit that 30 days for complete compliance is a little onerous. If we

were at all listening during the public consultation and hearings on this bill, the point was made and stressed that it was insufficient time. We are simply responding to the concerns raised at the public hearings as reasonable and, therefore, we have amended accordingly.

**The Chair:** Further questions, comments to Mr Jackson’s amendment to subsections (3), (4) and (5)?

**Hon Ms Gigantes:** The government motion on subsections (3), (4) and (5) identifies 30 days after the order is issued as the time at which a decision to prohibit a rent increase should become effective, and we feel that is plenty of time.

Again there is confusion exhibited by members of the opposition on the question of the completion of all work contained in an order and the satisfaction that a landlord is going to get work done in a reasonable period. The terms of the work order set out the reasonable period. The landlord can, under the legislation, dispute the terms of the work order and that is the point at which we find out whether there is enough time allowed for a landlord so that the penalty section in this legislation related to maintenance and repairs is not brought to bear against the landlord. The landlord can at that stage, as we have just discussed, go through a process of appeal; have a stay if that seems to be justified. There has to be a stage where we say in the legislation, “The time has come.” The work order has been made; the landlord has had a chance to appeal; a decision has been made on that. The terms of the work order have to be met; we are deciding when they shall be met.

We feel that this 30-day period is quite adequate. If we are going to provide an additional 30 days we will once again be moving off into the realm where the power of tenants under the legislation to seek redress when maintenance is allowed to run down is not adequate. We have had problems having tenants get adequate maintenance action through legislation for years in this province. Through the legislation we have set about providing a mechanism so that does not continue to happen. Once you go through all the stages we have just discussed in section 37 and get to the final moment of truth, as it were, we do not need to add another 30 days when that moment of truth actually becomes a reality as far as an effective response for tenants is concerned.

**Mr Jackson:** Can I ask a question to that? Are we then saying the landlord does not have to have the work completed? That is when the state acknowledges that this is final, it is now on you, you are liable and that the repercussions beyond this are civil court or the Supreme Court or whatever? Is that the nature of my confusion?

1420

**Hon Ms Gigantes:** We are saying that if the work order, whose terms may have been disputed under section 37, has not been met, then after 30 days we are going to see this legislation swing into motion and have the effect of staying rent increases.

**Mr Jackson:** Right. That is the first penalty. But is it the completion—I am sorry, minister, I want to understand you. Does the work have to be completed by the end of



that 30 days; that everybody agrees that now you should have had that done? There is my confusion. I am not arguing with you. I just want somebody over there to clarify it for me. You are helpful but not unto my question.

**Hon Ms Gigantes:** The words in my ear from Colleen Parrish are the words that I have been trying to say to you. The compliance period is over within the work order. The terms of the work order may have been varied; they may have been appealed, changed or stayed under section 37. The period attached to the terms of the work order has been passed and we are saying that within 30 days of that—

**Mr Jackson:** Thirty days after the date in the order.

**Hon Ms Gigantes:** That is right. Then we shall say, "There shall be no rent increase."

**Mr Jackson:** That makes more sense.

**Mrs Marland:** Mr Chairman, it may make more sense in understanding what the minister's answer was, but it certainly does not make any sense in terms of the practicality of the situation. This means that if for any reasons beyond the control of the property owner the work is not even started, let alone completed; if a work order is issued that certain work has to be done as under section 37, they only have 15 days to dispute the condition of the work order or the terms of the work order. Now we have 30 days to get the work done or started.

**Hon Ms Gigantes:** No.

**The Chair:** Were you looking for a response?

**Mrs Marland:** Let me phrase the question differently. If it is not, are they not eligible for their rent increase?

**Mr Jackson:** I am confused with those head shakes.

**Hon Ms Gigantes:** Shall I start again?

**The Chair:** Please.

**Hon Ms Gigantes:** A work order is issued. Under section 37 a landlord has 15 days to let a rent officer know if the terms of that work order are difficult from the landlord's point of view, and the landlord appeals to have a review of the work order. The work order may be reviewed. It is put in place, established. However, it may be varied, confirmed, withdrawn or whatever by that review process.

The work order has terms attached to it. It may say, "Nine months from now you have to have the 14 steps on such-and-such a floor fixed." Or it may say, "Three days from now, you have to have the hole in the step fixed." Once the term of that work order is up and the process is followed so that it is brought to the attention of the rent office that the term has not been met, 30 days later—here we are giving landlords who have not complied with the work order an extra 30 days. There is a 30-day period of grace in which the landlord can try and scramble and get it done. But 30 days after the term of that work order is up and the work order has not been met, an order is issued that says rent increases will not be permitted.

**Mrs Marland:** So where the wording actually is "the order is effective 30 days after it is issued," this means it is only effective in not permitting rent increases. That is the effectiveness of it.

**Hon Ms Gigantes:** That is correct. The order to which we are referring here is the order that the work order has been found unmet. There is a determination by the rent office that the work order has not been met and 30 days later the order for non-increase of rents is made.

**Mrs Marland:** So in the situation where a work order is issued for a certain project of work to be completed—did you want to say something else?

**Hon Ms Gigantes:** Yes. I think I phrased it incorrectly. There would be an order that related to the non-fulfilment of the work order and it would not have effect for 30 days. Okay?

**Mrs Marland:** So it is really a notice that is given.

**Hon Ms Gigantes:** It is a final, last, flexible and accommodating notice.

**Mrs Marland:** We will find out how flexible and accommodating in response to my next question.

**Hon Ms Gigantes:** It is probably too much.

**Mr Jackson:** There is time to amend it.

**Hon Ms Gigantes:** Thank you for your support.

1430

**Mrs Marland:** Let's say a work order is issued to remedy a certain situation and that project that is going to be the remedy is normally feasibly executed in, say, a month or two months. They are given a month or two months to do it, but during that time it may prove impossible to do it, beyond the control of the individual property owner—strikes, for example, or just absolute lack of availability of a part, whatever. Because there is no channel of appeal to any of this legislation or any of the sections in it, does that mean that in this section, it is going to be 30 days or else? It is just 30 days and we do not care if there has been a province-wide strike of cement workers or bricklayers or there are no parts available for this elevator. I gave as an example that an elevator part has to be shipped by sea, it cannot be shipped by air, and it comes from Europe; this is an example in my own riding. Is this so arbitrary that there would not be any leniency in any of those circumstances which are beyond the control and the good intent of the property owner to meet the work order and to execute the remedy?

**Hon Ms Gigantes:** I am going to ask Colleen Parrish to comment on this because we had both originally looked at section 58 as providing what you are looking for, Mrs Marland. We believe now that it would not, and Ms Parrish can explain what avenue might be available in that case.

**Mrs Marland:** Good luck, Ms Parrish.

**Ms Parrish:** I think the way this system works is that it relies upon the work order issued by a work order issuer. That may be a municipality. It may be the province, where it is a provincial standard that is breached.

**Mrs Marland:** The part-time workers.

**Ms Parrish:** It could be that the order is issued by a rent officer, who, by the way, is a full-time worker. It is the inspectors who are part-time. The order is issued by a full-time worker.

**Mrs Marland:** Oh, right.



**Ms Parrish:** It could be a public health official who has issued the work order; it could be a provincial staff member in other ministries, such as in the elevating devices example. People even talk about the possibility that you could have a pesticides issue or whatever.

**Mr Jackson:** It could even be the board of health.

**Mrs Marland:** She said that.

**Ms Parrish:** It could be the board of health. So essentially this has some reliance on our work order issuer to resolve all issues related to the work order. The director does not inquire into the bona fides of that order, because that is the job of the order issuer. If the landlord has a dispute with the order issuer about the assessment of the situation, about the period of time given for compliance, about the reasonableness of various conditions, then he must use the remedies related to this work order.

This is not a system that gives you a second kick at the cat if you are not satisfied with what the Ontario Municipal Board said or what the municipality of Mississauga said or whatever. All this does is say that where that process is exhausted and where the landlord has not complied and where the work order issuer has forwarded the order to the director, there will be a notice that goes to the landlord that says in 30 days rent increases will be stayed because he has this outstanding work order. There is no ability to abridge that time or to adjust the time. The reason is that this is not a decision to which the Statutory Powers Procedure Act applies. There is no hearing at that stage. The hearings have occurred at the stage of the work order issuance. This is essentially a system designed to deal with a situation in which all appeals have been exhausted but the orders are not being honoured.

**Mrs Marland:** Okay. One final question. You have given reason why you are not willing to extend this 30 days to 60 days, but if there is a stay in a rent increase, is it not so that the stay in the rent increase is as of the date the work order was issued?

**Ms Parrish:** No, it is as of the 30 days from which time we have issued the order. The reality is that the work order has not been complied with. Maybe it was supposed to be complied with on February 1. If it is not complied with on February 1, the city makes an inspection. They say, "Still not complied with." They send an order to the province. We read the order. We then send out our order and then, 30 days after that, the order is effective. So the landlord has not only to the end of the compliance period and the 30 days but, to be frank, he also has the period of time it is going to take the municipalities to get around to sending us the order for us to get around to issuing our order. That is, frankly, why we are concerned that you could have a very long period of time here if you do not attempt to impose some time limitations in the statute.

**Mrs Marland:** So that is why the difference between 30 and 60 in actuality is a difference in the time that the rent would not be allowed to be increased?

**Hon Ms Gigantes:** If I could just add to that, the concern really was that originally we had not put a time limit, as I recollect. There had been no time limit in the original

bill, and there was a concern that this whole process could be spun out and spun out and spun out.

**Mr Jackson:** You do not have that concern any more?

**Hon Ms Gigantes:** Thirty days is a long time. I think when you are talking about the kind of process we have described here through section 37, where the possibility of repeal and review and all that stuff is there around the work order, to give another 30 days after all these communications have taken place errs on the side of providing too much time, in my view.

**Mr Jackson:** As you have described the system, you were referring to segments of the process that did not have time limits associated with them. That is your concern.

**Hon Ms Gigantes:** Originally.

**Mr Jackson:** Are you saying every one of those processes—the appeal does not have a time limit on it; it only has a time limit on it when you file. But your government is not under any time constraints as to how soon you will hear the appeal, which front-ends this clause in terms of when the final order axe falls.

**Hon Ms Gigantes:** That is right.

**Mr Jackson:** That is open-ended, and that is the responsibility of your government.

**Hon Ms Gigantes:** That is a responsibility that the government is taking on under the legislation.

**Mr Jackson:** That is what I thought. Okay, thank you.

**The Chair:** Further questions and comments to Mr Jackson's amendment to subsections 38(3) and (4)? Shall Mr Jackson's amendments to subsections 38(3) and (4) carry?

Motion negatived.

**The Chair:** We will now deal with the government amendment. We have had a rather full discussion of the issues involved.

Shall Ms Harrington's amendments to subsection 38(3), (4) and (5) carry?

Motion agreed to.

**The Chair:** Now section 38.1. Before we do that, I would like to draw the members' attention to a group that has chosen to come and have a look at how the legislative process works. Dr Rick Loreto is conducting a seminar on the legislative process for Management Board secretariat. Welcome to the committee.

Now we will do 38.1.

**Ms Harrington:** Can we pass section 38 first?

**The Chair:** You want to pass section 38 first?

**Ms Harrington:** Yes, I do.

**Mr Owens:** Mr Chair, what is the name of the gentleman and the organization again?

**The Chair:** Dr Rick Loreto of Management Board secretariat.

**Mr Owens:** Welcome.

**Mr B. Ward:** Welcome.

**The Chair:** Shall section 38, as amended, carry?

Section 38, as amended, agreed to.

**Ms Harrington:** We certainly appreciate having guests with us and hope they will be able to endure.

1440

**The Chair:** Ms Harrington moves that the bill, as reprinted to show the amendments proposed by the minister, be amended by adding the following section:

"38.1(1) The director shall stay an order prohibiting a rent increase if he or she is advised before the order is issued that an appeal of the work order that is the subject of the order prohibiting a rent increase has been filed.

"(2) If an order prohibiting a rent increase respecting a residential complex or a rental unit in it has been stayed, the landlord may increase the rent charged for any affected rental unit or give a notice of rent increase respecting any affected rental unit in accordance with this act.

"(3) If the director has stayed an order prohibiting a rent increase and he or she is advised that the decision on appeal confirms the work order, the director shall lift the stay of the order prohibiting the rent increase.

"(4) If the director lifts the stay of an order prohibiting a rent increase,

"(a) the order shall be deemed to have been effective as of the day that is 30 days after it was issued;

"(b) any notice of rent increase respecting an affected rental unit issued during the period that the order would have been effective but for the stay shall be deemed to be void; and

"(c) any increase in the rent charged for an affected rental unit that took effect during the period that the order would have been effective but for the stay shall be deemed to be rent charged in excess of that permitted to be charged.

"(5) Subsection (4) does not operate to make a landlord who increased the rent charged for a rental unit in accordance with subsection (2) guilty of an offence."

Questions or comments?

**Ms Harrington:** This amendment changes the treatment of a work order which has been received by the director and which has been appealed. For example, the municipal council would forward a copy of the order and the notice of appeal simultaneously. An order prohibiting a rent increase would then be issued. However, the order would be stayed, that is, not in effect, pending resolution of the appeal.

While the prohibition order is stayed, the landlord may increase the rent charged for any affected rental unit or give notice of a rent increase.

Where the work order is confirmed, the director lifts the stay of the order prohibiting a rent increase, and the order is effective as of 30 days following the date it was originally issued.

I hope that that is of some help.

**The Chair:** I am certain it is, Ms Harrington. Further questions and comments? Shall Ms Harrington's amendment to section 38.1 carry?

Motion agreed to.

**The Chair:** Subsection 39(1), as printed. Questions, comments or explanations?

**Ms Poole:** Mr Chair, I have had some discussions with the ministry on this one because of my concern with the word "varies" and some of the abuses that may occur, because it is not specified what exactly is meant by "varying" a work order. I believe the ministry has suggested we stand this particular section down until we can perhaps accommodate some different wording. So I would ask for unanimous consent to stand down the section.

**The Chair:** Minister?

**Hon Ms Gigantes:** We are quite willing to consider some change to this amendment that we have put forward and we do not quite have agreement yet on what the nature of the wording of that change should be.

**The Chair:** Do I have unanimous consent to stand this section down?

Agreed to.

**The Chair:** Subsection 40(1).

Interjection.

**The Chair:** Well, I was just going to leave that until we came back to the original section.

Section 30:

**Ms Poole:** We did earlier stand down subsections 30(8) and (9). I wonder, since the ministry has come up with some new wording for those particular subsections, if we could consider dealing with that section now.

**The Chair:** I see no reason why we should not.

**Ms Poole:** The clerk has copies of the amendment in this regard, which she is passing out.

**The Chair:** Ms Poole moves that subsections 30(8) and (9) of the bill, as set out in the minister's reprint, be struck out and the following substituted:

"(8) If the landlord who made the illegal charge is the tenant's landlord at the time of the order, the order may provide that if the landlord fails to pay the amount owing under the order, the tenant may recover that amount plus interest as may be directed in the order by deducting a specified sum from the tenant's rent paid to the landlord for a specified number of rent payment periods.

"(9) Nothing in subsection (8) limits the right of the tenant to collect at any time the full amount owing or any balance outstanding under the order."

**Ms Poole:** I would really like to thank the ministry for its cooperation in coming up with this new wording. It was in reaction to a concern I expressed that the wording under the original 30(8) and (9) seemed to be misleading in that the scenario is supposed to be that the landlord pays a lump sum plus interest to the tenant. In the alternative, if the landlord failed to do so, the tenant had the right to deduct it from his rent in specified amounts. The reason it was misleading in the original section was because it was not clear that the standard is that it is the lump-sum payment that is to be paid. I thank the ministry for what I feel is much clearer wording.

Motion agreed to.

Section 30, as amended, agreed to.

Sections 40 and 41, as amended, agreed to.

Section 42:



**The Chair:** Are there amendments to section 42? We are looking at just the reprinted bill, I believe. Questions and comments on section 42, as printed? Shall section 42 carry? All in favour?

**Mr B. Ward:** Could we have five minutes?

**Hon Ms Gigantes:** There were none against.

**Clerk of the Committee:** Yes, there were.

**Hon Ms Gigantes:** Nobody spoke against it.

**The Chair:** We will take the vote at five to 3. The committee is in recess until five minutes to 3.

The committee recessed at 1451.

1458

**The Chair:** I will now place the question. All in favour of section 42, as printed, raise your hands. Those opposed? Carried.

Section 42, as amended, agreed to.

**Mrs Marland:** Mr Chairman, because we have these constant interruptions for five-minute recesses while the government members gather their clan to come in to vote, it is causing an interruption in the process of these committee hearings. We are already very short of time and will be cut back on the amount of time that we really need to examine this bill clause by clause. The absurdity of this business of, "Oops, we need our members here"—these members, if they are here to vote, have the option of being here all the time. I really take exception to what we are into with the government members when they have 74 in their caucus and we have 20.

**The Chair:** Mrs Marland, all members of the committee have the right to ask for up to 20 minutes at any time on any vote.

Section 43, as amended, agreed to.

Section 44:

**The Chair:** Next is section 44. This is as printed, minister?

**Hon Ms Gigantes:** Yes, as printed originally. This is the original bill.

**The Chair:** But it is printed, too.

**Hon Ms Gigantes:** It is printed, yes.

**The Chair:** Questions and comments to section 44, as printed?

**Mrs Marland:** I thought there was a government motion on section 44.

**The Chair:** As printed, Mrs Marland, it exists. Shall section 44, as printed, carry? Carried. All in favour? Opposed? The motion carries.

Section 44, as amended, agreed to.

**Mr Abel:** On a point of privilege, Mr Chair: Since Mrs Marland is so concerned about wasting time with voting, could I ask for unanimous consent that we stack all voting to the end of the day?

**The Chair:** I am told, at that point we would still have to take each vote individually.

**Mr Abel:** Individually, yes.

**The Chair:** Do you understand that?

**Mr Abel:** But they would all be voted at the same time. That is my request. Is that in order?

**The Chair:** If we have unanimous consent.

Interjection.

**The Chair:** No, we do not have unanimous consent.

**Mrs Marland:** We asked for that earlier and we could not get it from you, remember?

**Mr Abel:** Yes, but since you were so concerned about wasting time—

**The Chair:** But we do not have unanimous consent, Mr Abel.

Section 45: We will deal with subsection 45(1). We have a Liberal amendment. Ms Poole.

**Ms Poole:** We have a Liberal amendment to subsection 45(1) which relates to adding or discontinuing services for tenants in a building. However, I am wondering if we could have consent to stand this down. I was talking to Ms Parrish just a few minutes ago about the Liberal amendment and apparently the ministry does not feel this will solve the problem of the carports that we have been advised of by Mr Riopelle. So I wondered if we could stand that down and see if there is any other wording that could be suggested.

**The Chair:** Do we have agreement to stand down subsection 45(1)?

Agreed to.

**Mrs Marland:** Mr Chairman, could I ask a question on an amendment that was stood down? I am referring to subsections 20(8) and 22(3). Those were two amendments that were stood down because we understood that the ministry was going to look at those amendments, being our amendments, Conservative amendments, because you thought you could support them. This morning my staff person who drafts these amendments said she was working with the ministry but now she is not at all sure that you are going to be supporting it.

The point of my question is, is there any point in my staff carrying on investing time with those amendments if the government has now changed its position from when it thought it could support them?

**Hon Ms Gigantes:** I will ask Colleen Parrish to update us.

**Ms Parrish:** We have been working with your staff, and Ms Dalziel has been very helpful to us. We have come to sort of a meeting of minds as to which section of the act should be amended to do this and it is section 125. We have not changed our minds as to the policy.

There has been some discussion about whether the drafting is not kind of hard to read and all we are really doing now is trying to see if we cannot draft it in a way which makes it a little bit easier read. There has been no change of position on the policy and we hope that by tomorrow we will have a new draft and that we can all go forward with that amendment. There has been no change in the policy position. There are just some drafting issues around whether we can explain what these prescribed allowances are in sections blah, blah, blah and blah, blah, blah. It is a very hard read, let's put it that way.

**Mrs Marland:** So it is still looking positive, but it is going to be further on, around section 125 or so?

**Ms Parrish:** Yes. I think everyone has agreed that the fix is in section 125 and not in subsection 20(8).

**Mrs Marland:** Thank you for that answer.

**The Chair:** Thank you, Mrs Marland. Could I have unanimous consent to stand down all of section 45? I think that makes more sense.

**Hon Ms Gigantes:** Section 45? Okay.

**The Chair:** We will come back and do it.

**Hon Ms Gigantes:** We are quite prepared to deal with the amendment which has been put forward to subsection 45(2), which we intend to accept.

**The Chair:** All right. We will do that. Subsection 45(2).

Ms Poole moves that subsection 45(2) of the bill be struck out and the following substituted:

"If an order under section 33 determines that an agreement under subsection (1) has been entered into as a result of coercion or as a result of a false, incomplete or misleading representation by the landlord or an agent of the landlord, the agreement is not enforceable."

**Ms Poole:** This is very similar to the amendment which passed successfully under section 33, basically just extending the word "coercion" to include false, incomplete or misleading information given by the landlord or his or her representative, so I am very hopeful that the government would also agree to pass subsection 45(2).

**The Chair:** Are there further questions or comments to Ms Poole's amendment to subsection 45(2)? Shall Ms Poole's amendment to subsection 45(2) carry? Carried.

Subsection 45(3), questions or comments? Shall subsection 45(3) carry? Carried.

Sections 46 to 49, inclusive, agreed to.

1510

Section 50:

**The Chair:** Are there questions or comments? Shall subsection 50(1) carry? Carried. Mrs Marland, you have an amendment to subsection 50(2).

Mrs Marland moves that subsection 50(2) of the bill be struck out and the following substituted:

"If a rent officer believes that a person who should be included as a party has not been so included, the rent officer may permit that such a person be substituted or added as a party to the proceeding after consultation with other parties."

**Mrs Marland:** This amendment ensures that when a rent officer adds or substitutes a person or party to a hearing, the other parties are consulted.

**The Chair:** Are there further questions or comments to Mrs Marland's amendment to subsection 50(2)? Ms Poole.

**Ms Poole:** This appears to be a very reasonable amendment and I think the government would want to allow this type of consultation and the Liberal caucus will be supporting it.

**Hon Ms Gigantes:** I do not understand what the purpose is here. Perhaps Mrs Marland could explain how her amendment would become an amendment which we would find useful.

**Mrs Marland:** Under your subsection 50(2) in the bill, madam Minister, you say, "If a rent officer believes that a person who should be included as a party has not been so included, the rent officer shall require that the person be substituted or added as a party to the proceeding."

**Hon Ms Gigantes:** Right.

**Mrs Marland:** Rather than "the officer shall require," we are saying "the rent officer may permit that such a person be substituted or added as a party to the proceeding after consultation with other parties." If you have got a hearing between two parties, in most cases it will be between the property owner and the tenant. If either party wanted to bring someone else into their deliberation, I think that in fairness it should be done the same way it is done in a court of law once a proceeding has begun, that it is with consultation with all parties.

You will notice that our amendment does not even say—you asked me the question, so I am waiting until you stop talking and I will answer it. Ours is not saying "after agreement of all parties." It is simply saying "after consultation with other parties." That is not very difficult or onerous. It is not saying they can only be there if all parties agree; it is saying after consultation.

It is a very human, decent way to proceed. Sometimes it may be that there are elderly tenants who are not very capable of speaking for themselves and they want other parties to be there, maybe family members or maybe other agents, for them. It is obviously a very reasonable amendment that is suggesting that, in the interests of the two parties at a hearing, another person may be added or substituted.

A few days ago, Ms Parrish said it is quite in order to have agents representing tenants, so I think the amendment stands on that statement. You have already acknowledged that it is okay. This is talking about substitution or additional people. It is not very complicated.

**Hon Ms Gigantes:** Mr Chair, if I could, then, I would like to note for the record, the written Hansard, that Mrs Marland had to wait a full two seconds for me to exchange a few words with my adviser from the Ministry of Housing while she was speaking.

**Mrs Marland:** Aren't we getting petty.

**Hon Ms Gigantes:** I think it is important to note that two seconds can make her stop dead in her tracks and get all annoyed.

I would suggest Mrs Marland is confusing issues. We are not talking here of agents, we are talking of other parties. The government position, as laid out in section 52, indicates that the rent officer has formed a belief, has had some reason to come to a belief that a person should be included as a party. What Mrs Marland is presenting us with is an amendment that says once the rent officer has come to that belief, then the rent officer has discretion about having that person included in the proceeding. Further, the rent officer has no discretion but to consult those already involved in the proceeding.



We consider this both unnecessary and perhaps confusing in terms of the process involved. We think that when the rent officer has come to a belief that a party shall be included who has not been included before, then that person should be included, and there should be no obligation on the rent officer to consult with existing parties to the proceeding.

**Mrs Marland:** As much as I try not to be drawn into the pettiness of the minister, she did ask me a question, however. I was in the middle of answering her question when she had to listen to someone else, which is fine. I was just saying I was waiting until she could listen to me again, since she had asked me a question.

On the subject of the rent officer having discretion, it brings me to the matter of who this rent officer is. I understand there was a brief discussion of that earlier this afternoon. I would like to ask for the record, since we are now at Tuesday and have three days left, whether the minister could fulfil her offer of having someone from her staff present to discuss the job description, training and qualifications of the rent officers. I suggest we would have to do that tomorrow afternoon or Thursday morning, whenever the minister's staff can be here, and I would like to know when they are coming. Could we have that answer, Mr Chairman?

**The Chair:** I believe it was previously undertaken that the minister and I would decide on that scheduling and we would involve in consultation the whips of the three parties. The minister and I will determine that so the committee may hear from the ministry directly.

**Hon Ms Gigantes:** If I could add to that, I had also suggested early in the afternoon that it would probably be helpful for us to know not only the time but the length of time the committee would wish to have ministry staff discuss this question.

**Mrs Marland:** The key person in the implementation of this legislation is the rent officer. That being so, the legislation is not going to go anywhere after it is passed without rent officers. I think the public has a right to know who these people are going to be, what their qualifications are, what their training is, and the prerequisites for the job.

I would suggest it depends how many people on this committee are interested in asking questions of the staff about this information. If we are saying the ministry staff can be here for an hour and everybody is going to ask some questions, that may not be long enough. It may be long enough if I am the only person asking questions. It is a matter which I originally brought up, I say with respect, three months ago. I do not think at this point it is too fair to ask, "How long is it going to be?" If I am the only person asking questions, I am quite sure I can get my answers from the ministry staff in half an hour to 45 minutes at the most. If I am not the only person asking questions, I do not know how long it will take. I can only tell you how much time I need to get the answers.

1520

**The Chair:** If it would be helpful, the minister has informed me that the ministry will be available at 2 o'clock tomorrow afternoon to answer questions.

**Mrs Marland:** That is excellent. Thank you.

Now, if we are talking about the rent officer's discretion in the minister's explanation of her subsection 50(2), as opposed to the amendment we have just placed, I am wondering why the rent officer "shall require" that person to be substituted or added, rather than "may permit." In other words, there is no option of either party; it is totally in the power of the wizard.

**Hon Ms Gigantes:** If that is a question to me, the wizard, as Mrs Marland calls the rent officer, is the person who will come to a belief. We do not contemplate or desire a situation in which the rent officer has come to a belief that another party should be added to the proceedings and then that will be open to a round of debate, discussion or pressure from any of the parties to the proceeding at that point. We do not wish this to be a question that is going to generate a lot of to-ing and fro-ing, argument, discussion, debate, counterargument and so on. We think that when the rent officer comes to a belief that a party should be added, that party should be added.

**Mr Jackson:** Is the concept of notification of all parties a concern to the minister? I understand where she is coming from, and I understand what the word "consultation" means, but "notification" is another word which, in my view, would apply, in that there are no surprises that changes have been made.

**Hon Ms Gigantes:** Where would that come from? I am just checking where the notice would come from.

**Ms Poole:** On a point of order, Mr Chairman: While the ministry staff is looking up some information, I had a request from a lady from Sault Ste Marie, only a one-paragraph-letter request of the committee which I would like to read on the record.

She said: "As a former landlord, I'm very interested in the committee meetings on rent control legislation. After the meeting on Thursday, January 16, I felt I was left 'hanging in the air' and, as the suspense mounts, I would like to know if I can receive a copy of all proceedings following January 16....Among other things, I can hardly wait to hear the story of Chicken Little, as related to the bill, and told by the member for Yorkview! Thank you for your attention to this letter. Yours sincerely, Barbara White."

So Mr Mammoliti, you have a wide viewing audience out there.

**The Chair:** Thank you, Ms Poole. That is not a point of order.

**Ms Poole:** But it was a good letter.

**Hon Ms Gigantes:** If I might, I would ask Ms Marland first, or Mr Jackson, whose question it was, to turn for us to section 71, which says, "Any party to the application may make submissions at a pre-hearing conference respecting the matters in issue at the conference."

If we return to paragraph 69(3)2, the question of "whether any person ought to be added or removed as a party to the proceeding" can be a matter for a pre-hearing conference. So starting from the top, the rent officer comes to a belief that a person should be added. The rent officer says a person shall be added. One of the parties to the



process says, "We want a pre-hearing conference on this." Sections 71 and 69 swing into effect and under paragraph 69(3)2, the question can be addressed. I hope it does not happen very often.

**Mr Jackson:** The scenario of concern to me, notwithstanding that which caused Mrs Marland to bring forward this amendment, centres around substitute decision-making and a whole series of new pieces of legislation currently being discussed down the hall by another committee: that a growing number of, to a degree, challenged tenants, meaning their capacity is diminished greatly for a variety of reasons, that these individuals wish to and may avail themselves of services previously unavailable in this province.

**Hon Ms Gigantes:** That would involve having a person acting as your agent.

**Mr Jackson:** That begs an even greater question, because what I am sensing now is that each senior could go out and acquire his or her own agent. That makes me a little nervous, but I do not wish to burden a section with that. The concept of notification can help when all parties are aware that this activity is going on, so that you are not dealing with 10 or 12 agents representing 12 "challenged" or vulnerable citizens who may be tenants in that building. What one party is not communicating to another party, everything is communicated to the rent officer.

1530

I follow the minister clearly in how sections 69, 71 and back to 50 cascade and how we react to those. I am still trying to see clearly where the concept of notifying all parties that so-and-so has made an application, or so-and-so on behalf of so-and-so has made an application. Whether we want to get into their right to appeal it, you cannot appeal something you have not been advised of.

I think it is discriminatory to suggest that if you are a so-called tenant applicant only the landlord needs to be notified. My thesis is that tenants should also be notified when other tenants within their building wish to appear. I have given as an example the process of the Advocacy Act and substitute decision-making responsibility which is going to impact in these sections.

**Hon Ms Gigantes:** If I could, I believe the issues Mr Jackson raises are definitely issues which affect the operation of this legislation, but I would call to his attention that I think they are better addressed in, first, section 48 and later section 56, which deal with the notification and the acknowledgement of notices.

**Mr Jackson:** So to prevent me from having to sit here and read that while we all watch me read, are you undertaking to consider amendments in that area that ensure that when there is a change all parties are notified; that those people wishing to come forward or those to whom, to be more specific, the rent officer has agreed can now become parties—that all parties are subsequently notified of that fact? That is really all I am interested in.

I have not seen it clearly. I understand how the process flows and the minister has unveiled that properly. I still do not see nor am I clear that all parties are aware when persons are approved for that process so that this is a point of information that so-and-so down the hall has now some-

one representing him and I might be able to contact so-and-so and that person can also represent me, etc.

**Hon Ms Gigantes:** There are a certain number of matters which this legislation can address in terms of the implementation of the measures in it and there are other matters that really fall in other legislation. I do not think we can call upon the rent control regime in Ontario to provide the framework that addresses all the questions of substitute decision-making that you are raising.

**Mr Jackson:** No. That was just an example.

**Hon Ms Gigantes:** Some of those will have to be addressed within the legislative framework that we create for substitute decision-making rather than through this particular legislation. I do believe that if he takes a look at section 48, the giving of notice, and section 56, the acknowledgement of notice, that provision has been made for an adequate framework within this legislation for addressing the questions of substitute decision-making.

Now, there are a million kinds of examples we can think of where a rent review officer might consider whether somebody should be added to a proceeding. I am going to suggest to Mr Jackson that were he to cast his mind to the role of the rent officer and think about the position and the duties of the rent officer, it will be easier for the rent officer, in most cases, not to seek to add people to a proceeding. One does not in an administrative position generally feel impelled to complicate the decision.

I think the emphasis will be quite the contrary and for the rent officer to come to the belief that a person should be added to the proceeding is going to take some unusual kind of evidence. It may in fact be the kind of evidence to which he is speaking when he talks about the question of cases where a substitute decision is involved.

I think that what we have provided here are mechanisms that, as far as humanly possible, are going to provide that in cases where it is quite obvious that it is necessary to have another person added to a proceeding, that decision will be made by the rent officer and will be made with effect and without a whole lot of debate, except if somebody wants to go to the trouble of using sections 71 and then—I have lost it—56 to ask for a pre-hearing. Is it 68? Section 68, sorry.

**Mr Jackson:** If there is a dissuasion—to use your words—to increase the workload or to complicate the hearing, then I submit to you that there would be greater reason for people to seek out the clause which will cause a pre-hearing. My purpose is only in making sure there are no surprises once we get to the hearing stage. That is really all I have said and I have specifically used this as an example.

I will be working on the other piece of legislation and I am concerned that those legal procedures that impact on vulnerable individuals are adequately represented. So my point of interest here is solely that if there is one vulnerable tenant in a building who has been able to seek out assistance, I certainly do not want 20 tenants seeking out 20 different people to advocate on the exact same point; that in fact there is some wisdom in sharing that. That is all I am saying.



**Hon Ms Gigantes:** I bet a rent officer would agree with you.

**Mr Jackson:** I am sure, but we are talking about civil servants here. If the legislation does not compel them to do an act—I do not want to confuse you—to follow a procedure, and the regulations which flow from the bill do not compel them to do it, and by your own testimony you do not think they are highly impelled to be doing it in the first place—I simply want to go back to the point that you have a whole other group of tenants out there who are not informed that they may be represented efficiently and effectively, if we can communicate that, and it is quite in the best interests of the tenants to make sure they do not show up with 20 advocates who all want standing; that in fact if all parties are aware, you can piggyback them.

That is the only reason I have suggested the concept that, once he has made a decision, the tenants in the building know who is being added and the landlord be advised. That is all I am suggesting. I understand the process; I just do not see where the bill says they will be communicated that decision. I did not hear you show me that; you simply said it.

**Hon Ms Gigantes:** It is not in the bill. In fact there are many things in this world that are not in the bill.

**Mr Jackson:** I heard that extrapolation and I do not necessarily buy it. I have been working on legislation as long as you have in this building and I just know that if it is not in there, this is our opportunity. You will have very many busy and challenging things facing you in the coming three and a half years if you are still this minister, and reopening this bill certainly will not be one of them.

**Hon Ms Gigantes:** It might be, but I do not think on this point.

**Mr Jackson:** Once you open a bill everything is available to be open, as you know. So it never gets open, but that is fine. I have made my point for the record.

**The Chair:** Any questions or comments on Mrs Marland's amendment to subsection 50(2)? Shall Mrs Marland's amendment to subsection 50(2) carry? All in favour? Opposed?

Motion negated.

**The Chair:** Shall subsection 50(2) carry? Carried. Shall subsection 50(3) carry? Carried. Shall subsection 50(4) carry? Carried. Shall section 50 carry?

Section 50 agreed to.

Section 51 agreed to.

1540

**The Chair:** Questions or comments on section 52?

**Ms Harrington:** Mr Chair, we have a government amendment.

**The Chair:** Where would I find this amendment, Ms Harrington?

**Ms Harrington:** It is a lengthy amendment replacing all of section 52.

**The Chair:** Ms Harrington moves that section 52 of the bill, as reprinted to show the amendments proposed by the minister, be struck out and the following substituted:

"52. The applicant shall file with the application,

"(a) in the case of an application under section 13 (application for increase above guideline), a cost statement in the prescribed form and information for the prescribed periods concerning the operating costs for municipal taxes, hydro, water and heating;

"(b) the prescribed material; and

"(c) all other written evidence that the applicant relies upon in support of the application.

"52.1 (1) An application is not complete unless all of the material referred to in clauses 52(a) and (b) has been filed.

"(2) If the applicant files an application that is not complete, a rent officer shall notify the applicant in writing of that fact.

"(3) The notice shall inform the applicant that,

"(a) the applicant may file further material to complete the application within the period set out in the notice; and

"(b) if the applicant does not do so within that period, the proceeding will be discontinued.

"(4) The period set out in clause (3)(a) shall not exceed thirty days and despite section 58, shall not be extended by a rent officer.

"(5) A rent officer shall discontinue a proceeding if a notice has been issued under subsection (2) and the applicant has not filed the required material within the period set out in the notice."

We have a Liberal amendment to the government amendment.

Ms Poole moves that section 52 of the bill be amended by adding the following clause:

"(a.1) all documents in the applicant's possession that relate to the application, including engineers' or consultants' reports and inspection reports;"

I am sure you wish to explain that, Ms Poole.

**Ms Poole:** At first glance it may appear that these items would naturally be covered under clause 52(c), "all other written evidence that the applicant relies upon in support of the application." However, traditionally tenants have had a very difficult time getting access to things such as engineers' reports, consultants' reports and inspection reports. We just wanted to make it perfectly clear in the legislation that if the landlord has this type of report available, it must be submitted with the other documentation with the application. If the landlord plans to make use of any of this information, then it is only fair that the tenants also have access to that information.

**The Chair:** Further questions or comments on Ms Poole's amendment?

**Hon Ms Gigantes:** Go ahead, David.

**Mr Winninger:** Not until after the minister.

**Hon Ms Gigantes:** No, go ahead.

**Mr Winninger:** I am concerned that this list be fairly inclusive. I am not so sure whether this kind of amendment is going to be acceptable or not, but if it were to be acceptable, there may be some additional reports we might want to highlight in there, such as an architect's report, because they have been helpful in the past in determining



whether there has been a need for capital repairs, and if so, to what extent. That is all I wanted to add at this stage.

**Hon Ms Gigantes:** What we have proposed here is that material which may not be relevant to the application be filed as a matter of course. Maybe that is what should happen. Maybe every time a landlord files an application we should get from the landlord all information in the possession of the landlord that has been produced for the landlord by an engineer or a consultant or indeed a landlord's own inspector. Is that what Ms Poole is looking for? That is what it would mean.

**Ms Poole:** I would point out for the minister's reference that our amendment specifically says, "All documents in the applicant's possession that relate to the application." We specifically pointed out in our amendment that we did not want extraneous material that might not apply to this particular situation. I think we have quite clearly stated that these reports would have to relate to the applications.

**Hon Ms Gigantes:** Perhaps we could ask Colleen Parrish to comment on this. As I understand it, once we are into a hearing, the tenants may request or the rent officer may request the production of documents which are considered relevant to the decision under section 13, and I would like to get Colleen's appreciation of what it means to ask for this up front.

**Ms Parrish:** Later on we have amendments to section 52 that say very clearly that if you are going to rely upon something, you must adduce that when you apply. So if you want to rely upon this engineering report, you have to cough it up. However, you may have had several engineering reports, and some of them may be positive to your case and some may not be. Usually it is not the case that you are required to adduce evidence negative to your own case.

At the hearing, those who are in opposite interest to you, whoever they may be, can say: "Do you have any other consulting reports? Did you get any other consulting reports?" Of course, unless you are prepared to perjure yourself, you have to answer that honestly. If at that time you refuse to disclose those reports, then the rent officer is in the position to assume that evidence may be negative in some way, but it is not normally the case that you require people to adduce evidence in their applications which they are not relying upon and which may be negative to their interest. That is normally done through the adducing of evidence by the party in opposing interest. It is a difficult area. You can obtain this evidence in another way, or if the person refuses to disclose the evidence, then the rent officer can assume a negative view.

The same would be true for the tenants. If perhaps they retained a consulting engineer and the engineer said, "In my view, this is necessary," and the tenants had other viewpoints and they did not want to bring that forward, they do not have to disclose the negative parts of their case until you reach the cross-examination stage.

I guess I have some discomfort about this, because I think it goes contrary to the way hearings are normally done and conducted. It does require parties to adduce evidence

that is negative to them other than in the cross-examination system, which is how this is done.

The other concern I have is sort of a technical issue. The applicant then has to decide what relates to the application. I can well imagine that if you have something which is negative, you are going to have some thinking about whether you can argue it is not in relation to your application. Then I have to say, what is the consequence if you do not? What happens if you do not? Then your entire application is dismissed, as opposed to going to a hearing in which the evidence as to whether or not it is relevant or whatever is adduced.

I have some discomfort that this does not give the parties the opportunities to have their evidence tested and cross-examined in the normal way. I understand what the intention is, which is to make sure that there is an opportunity to bring this material out, but I think there are other sections of the act that do that without forcing a party to disclose evidence as part of their application.

1550

**Hon Ms Gigantes:** If the rent officer asks if there are other reports which relate, the applicant has to bring in the materials on which he has relied, but if the applicant has left out one report which relates to the application but upon which the applicant is not relying and if the rent officer says during a hearing, "Have you had other reports," and the applicant says yes, can the rent officer say, "Produce them," and have that effected?

**Ms Parrish:** Yes, you can order it. If they refuse, you then can assume it is negative. You can say, "If you will not disclose this document, then I have to assume it is negative to your interests." That is normally how refusals are dealt with. But there are abilities to require evidence and so on in later sections.

**Hon Ms Gigantes:** I must say I am of two minds on this. I am not quite sure how best to proceed. Perhaps Ms Poole would like to make further comment. I think I would be prepared to reflect on this just a few hours more. I think that Mr Winninger is right, that if we are going to start listing documents which might be required in relation to an application, then perhaps we would want to include other documents. I am not sure of that. I am concerned about the question of what happens when you ask people to bring in everything in their possession that might relate to an application.

**The Chair:** I think Mr Winninger was looking for an opportunity.

**Mr Winninger:** Just one little addendum to what the minister said. I was concerned that if we do start specifying reports, it should be as exhaustive as possible, and then after some consultation, I thought to myself, "Is this really the place to do it?" Section 52 already says that the applicant has to file the prescribed material, so if it is decided that we should start listing some of the reports that should go in with the landlord's application, that could be done in a regulation as part of the prescribed material. If there is some expert evidence in the form of an architect's or engineer's report or whatever, that might be a better place to list it, rather than in a section like this.



**Hon Ms Gigantes:** But that does not really address the other point.

**Mr Winninger:** Sorry, what other point?

**Hon Ms Gigantes:** It does not address the other point of whether you should be asking an applicant to produce reports which may not be in the applicant's favour and on which the applicant is not relying.

**Mr Winninger:** At this point I was not prepared to go that far in my own position.

**Hon Ms Gigantes:** They may relate to the application, but if the applicant is not relying on them, what are we doing if we ask for their production?

**Mr Winninger:** In a judicial situation, these kinds of reports prepared in contemplation of litigation would be protected by privilege. That same privilege would not extend to this administrative tribunal situation, so there may be kind of an inequality that would be created for people who go to a tribunal versus those who go to a court. On the other hand, the Statutory Powers Procedure Act allows the chairperson of the tribunal to issue all manner of summonses for the delivery of evidence, so there is that discretion too in the tribunal.

**Hon Ms Gigantes:** We have that within the legislation. It is a question of whether we put the onus up front on the applicant to produce anything of an engineering, consulting or inspection report which might relate to the application.

**Mr Winninger:** I am content with the minister's position in this matter.

**The Chair:** I think we have been trying to determine that.

**Ms Poole:** I have a number of points to make. The first was in reference to the fact that the minister said that in the course of the hearing, the rent officer could require certain information to come forward, but the way this legislation is formulated right now, the legislation defaults to administrative review. It is only if one of the parties, the other party, requests within 30 days a hearing that we would actually be in the hearing process. That is the first problem.

The second is that it was brought to our attention that normally in a court proceeding, a person would not be required to prejudice his or her own interest by producing information that is negative to that interest. My concern in this particular scenario is that a landlord could go out and get an engineering report that says this is not structural; this does not need to be done. They might not like that report, so they may go out and retain a second firm, or a third or a fourth firm, until they get one that wants badly to do the work and says what they want them to say. In that particular scenario, I do not see why the tenant is not entitled to the information that there are five reports and four of them have said this work is not necessary or evaluated the work as being far less substantial and a fraction of the cost. I think that information should come to the tenants' attention. I think that would only be fair.

As far as doing it in regulation is concerned, I certainly would have no objection to this information being included by regulation. My general bias is to have it up front

in the legislation because that way it cannot be changed at the whim of a bureaucrat or a group of bureaucrats.

The one concern I personally had about it that as soon as you start listing things, then you do not want to omit one that is important to be included and omit it by accident. Certainly prescribing it would eliminate that particular problem.

If the minister wants to consider this, I would be happy to ask for unanimous consent to stand it down and she could give us her decision at a later time.

**Hon Ms Gigantes:** Before we do that, I wonder if it might be possible to ask members of the committee to take a look at section—administrative review, as a process in the bill, begins at section 62, and it is to section 66 I would ask members to address their thoughts. It reads:

"(1) The rent officer may consider any relevant information obtained by him or her in addition to the evidence given by the parties, provided that he or she first informs the parties of the additional information and gives them an opportunity to explain or refute it.

"(2) The rent officer may,

"(a) conduct an enquiry or inspect documents that he or she considers necessary;

"(b) question any person by telephone or otherwise; and

"(c) cause an employee of the ministry to do anything set out in clauses (a) and (b)."

That does give scope under administrative review, not just in a hearing, to the rent officer. Normally when an inspection is done, somebody in the building is going to notice, when a report is being done.

1600

**Ms Poole:** Mr Chair, if I could respond to the minister, first of all a tenant would not always necessarily notice something being done, particularly if it were an internal structure, such as somebody being down looking at the underground parking garage during the day when tenants are out. I am not sure it is always a fact that tenants would know that an inspection is taking place. The problem with the administrative review process is that it is not formulated like a hearing. Evidence is not produced on a continual basis, so that information may come out at some process in the hearing where you would say: "You mentioned that there was another report. Well, could we have access to the report?"

In an administrative review that does not happen. The documents are filed, and unless the landlord is not in his right mind he is certainly not going to write up within the documents that there were five different reports and that he did not like four of them. Where it is most likely to come out is in a hearing process, where they are asked direct questions. One of the biggest disappointments I had about the administrative review under the Liberal government was the way in which it was initially envisaged. There was going to be give and take. The administrative officer would bring in the landlord and tenant and sit them down face to face and they would talk about it.

It never happened, and I think it is most unfortunate that it did not. What happens is that they shift papers and



look through and see what the papers say and, since this legislation defaults to administrative review, unless some significant change is made within the next few days that we do not know about at this time, in many cases there would not be a hearing. So the tenants would never have access to the information and the ability to ask questions about whether there is other information. I certainly think that in those types of cases the fact that engineers, consultants and inspection reports be included, whether it be hearing or administrative review, would assist the tenant in making sure he or she has all this documentation.

**Hon Ms Gigantes:** I would like to give some time to think about this further, Mr Chair.

**The Chair:** What I am being asked for is unanimous consent to stand down the full section. Agreed? Agreed.

Sections 53 and 54 agreed to.

Section 55, as amended, agreed to.

**The Chair:** Questions or comments on clauses 56(a), (b) and (c)?

**Ms Poole:** Mr Chair, we will be supporting these amendments. It has long been a difficulty that completed applications sometimes take a long time to happen. When the landlord initially submits the applications, supporting documentation is not with it, so we think this is a good amendment and will support it. We are doing what I think we are doing.

**The Chair:** This must be an amendment I did not see.

**Ms Harrington:** Yes, Mr Chair, the government does have an amendment for section 56.

**The Chair:** Mrs Harrington moved that section 56 of the bill, as reprinted to show the amendments proposed by the minister, be amended by striking out "an application" in the first line and substituting "a complete application."

**Ms Poole:** Mr Chair, I think I was slightly ahead of my time. That is what I just spoke to; I am sorry about that. I thought that is what you were calling for.

**Ms Harrington:** It is all on the record, then.

**The Chair:** All right. Your amendment is 56(d) and (e), correct? Shall clauses 56(a), (b) and (c) carry? Carried.

**Interjection:** Wait a minute. You did not carry the amendment.

**The Chair:** I got excited here apparently and I forgot that we had not dealt with Mrs Harrington's amendment. Shall Mrs Harrington's amendment to section 56 carry?

Motion agreed to.

**The Chair:** Shall clauses 56(a), (b) and (c), as amended, carry? Carried.

Mrs Poole moved that clauses 56(d) and (e) of the bill be struck out and the following substituted:

"(d) that there will be a hearing unless all of the parties agree to have the matter decided by an administrative review;

"(e) of the right of parties to request a pre-hearing conference; and"

**Ms Poole:** This is considered to be a very important number by the Liberal party. To sum it up very briefly, it says there should be a hearing as a natural course of events rather than administrative review. The reason we have

taken this position is that right now the legislation defaults to administrative review unless one of the parties requests a hearing within 30 days. In many instances, usually dealing either with tenants or small landlords, they are not always as cognizant of the legislation as one might like or one might expect. Some of them do not realize that they would have to actually make application for a hearing and in fact that they would have to do it within a set time.

There is always, of course, a problem if you do not request a hearing within that 30 days. For instance, take the scenario where a landlord makes his application. That is day 1, and on day 29 the tenants make their submissions. In my understanding, at that stage the landlord, the original applicant, does not even have an automatic right to have a hearing. The landlord then has to request the hearing and it would be at the discretion of the rent officer whether to grant it. If it were any other parties to the hearing, then it would be automatic if they request it within 30 days; the hearing would be granted.

It certainly does not cover situations where information may come late or where they are not sure of the process to begin with, particularly in view of the fact that the government has virtually eliminated the right of appeal in this legislation except under fairly extraordinary circumstances, where it can be appealed to a court only and then only on a matter of law; it cannot be on a matter of facts. Since that right to appeal has been, as I say, virtually eliminated, it becomes even more important that a hearing be the recourse that we first recommend.

I would be most interested in hearing whether the government has had a change of heart in this regard. It is one matter where I cannot really understand the recalcitrance of the government in going to the hearing process as a right of first recourse, because it is something tenants and landlords are united on. They have requested it in many instances. It would save time. It would save that 30-day time period where tenants would go to administrative review and then have a 30-day period and decide to go to the hearing. It would expedite matters. I just think that, for all parties concerned, including the government, considering the lack of appeal, it should be a right of tenants and landlords in this province to have a hearing.

1610

**Hon Ms Gigantes:** I draw the member's attention to subsection 59(3), which provides that "a rent officer may extend the time for any party to request a hearing at any time before a notice of administrative review is issued."

**Ms Poole:** May I draw the minister's attention to the same subsection 59(3), which says a rent officer "may" extend, not "shall" extend, that again it is discretionary and up to the wizard to make this decision.

What we are saying is that tenants and landlords should have the right to an automatic hearing. Mr Chair, perhaps it would be appropriate if the minister would indicate, if she would agree to this amendment or a form of this amendment which would be satisfactory to her, or in the alternative, if she is not willing to go the hearing route, whether she has had a change a heart concerning appeals?



**Hon Ms Gigantes:** This is not a question of a change of heart. The matter before us I think is both an intellectual and a financial question. It is intellectual and quite practical because, having provided for 30 days as we do in the printed bill, rather than the original 15 which had been contemplated in this legislation, for a party to request a hearing we think 30 days will give plenty of opportunity in which interested parties can request a hearing. If the hearing is requested the hearing takes place.

The one matter which I think would cause us to think one more time on this issue is the question where there is a multi-unit application being considered. We are looking for more information about what that would mean in terms of administrative costs. I do not think there is any doubt that, in most cases where there is a multi-unit application, somebody is going to request a hearing. But in the off chance that that did not happen, we are trying to estimate what the administrative cost differences might be.

It is very hard to estimate these things. The original estimate we had made was that if we provided for a hearing in each and every case, we would be increasing the administrative costs in the early stages of the implementation of this bill almost \$12 million above what would otherwise be the case, and a mature implementation cost of well over \$10 million a year. To provide what? To provide that, in those cases in which neither party requests a hearing, there is a hearing. How valuable is that going to be? That is a judgement we have to make. We also have to make a judgement about whether tenants will feel, for example, obligated to go to a hearing if there is a hearing when they have not necessarily felt the need to request a hearing. That will mean feeling an obligation, oftentimes, to take time off work. But these are questions I am willing to look at again in the situation where we are dealing with a multi-unit application. I propose to try and provide information and a final reading on the situation to members of the committee, perhaps by tomorrow afternoon.

**The Chair:** So you are looking to stand it down? I have Mr Owens on the list.

**Mr Owens:** I want to share some concerns I have about not having the right to an automatic hearing. I am wondering if there is some way we could take a look at not beginning with the minimalist approach: Guarantee the right of a hearing but then work your way back in situations where a hearing is not required. I made some comments around the issue of the tenant democracy amendment that the Tories were moving and the issue around communication and ensuring people clearly understand rights and things like that. I am not sure these issues are dissimilar with respect to this as well.

Again, the thing that concerns me is that I understand there are cost implications in this amendment. However, I suggest that if there were some way where we could at least start from a full right and then work our way back, as opposed to beginning with a minimalist approach—I have not quite heard what the ministry would do in order to have rent review officers take the kind of look that would make me as a person who works with tenants feel comfortable, to ensure that those policy decisions are being carried

out and that people's rights are not being abridged simply because it is not a legislated clause but a policy issue within the ministry. If we are going to stand this down until tomorrow, I would be really pleased to work with whomever to do what we can.

**Hon Ms Gigantes:** This is an interesting question, because Mr Owens speaks about the current wording in the bill failing to provide a right to an automatic hearing. In fact, the wording in the bill provides an automatic right to a hearing. It is not an automatic hearing; it is a hearing that somebody has to apply for within 30 days.

What can we say? We have extended the period of time in which to request a hearing from 15 to 30 days, hoping that would provide all parties involved with a good sense of whether it was necessary to hold a hearing or whether they could find enough information to satisfy their minds one way or the other about the application and decide that they did not need a hearing when in fact a hearing was going to change nothing and the application would either be withdrawn by the landlord or approved by the tenants.

We have tried to provide that flexibility. The tenants will be notified of their right to a hearing. For some tenants, this may be difficult to understand. Certainly I can sympathize with Mr Owens's concerns around that. However, I think he would agree that whatever the failings of administrative review, it is by no means guaranteed that hearings in and of themselves get us to heaven any more directly.

1620

These are questions about which reasonable and caring people can have many different kinds of concerns, where we try and balance out what we believe to be the most suitable ways of meeting the objectives we seek here: clarity, lack of cumbersomeness—which is a very cumbersome way to put it—and a reasonable and fair means of delivering a fair decision on behalf of landlords and tenants. I am willing to go back and take another look, ask for advice one more time of the best-informed and most practised administrators in our ministry staff and see if there is some additional kind of elbow room we could provide here for people who may need to be told that the hearing is theirs, that, as Ms Poole puts it, the default position is a hearing. It may be that we can categorize cases where that would make sense. I am not sure of that yet.

**The Chair:** Do we have unanimous consent to stand this section down?

Agreed to.

Section 57, as amended, agreed to.

Section 58 agreed to.

**The Chair:** Section 59: We have a government amendment, as printed, and then we have a Liberal motion.

**Ms Poole:** The only problem with having stood down section 56 is that a lot of the subsequent sections, such as section 59, rely on the government having set up administrative review as the default position, with a right to apply to a hearing. Certainly section 59, to which we have an amendment, would be difficult to deal with if there were a possibility of the ministry changing its mind.



**The Chair:** In that case, can I have unanimous consent to stand down section 59 and section 60, which I think is also in a similar position? Do we have unanimous consent?

Agreed to.

Section 61:

**The Chair:** Section 61: Questions or comments?

**Ms Poole:** I have one comment. I am happy to pass this, with the proviso that in the event something happened to the other sections we might have to reopen this briefly to change some of the numbering. Otherwise I am happy to pass it at this time.

Section 61 agreed to.

Sections 62 to 64, inclusive, agreed to.

Section 65:

**The Chair:** Section 65: Questions, comments or amendments?

**Ms Poole:** We are in section 65, right, Mr Chair?

**The Chair:** You are perfectly correct.

**Ms Poole:** I just wanted to check, we were whipping through so quickly there. I want to point out that this particular section deals with administrative review and the material that is considered. It makes it very clear here that the only evidence and submissions in support of the applications that the rent officer may consider are those filed with the application or given in reply. This refers to my earlier comment that one of the difficulties in the administrative review process is that it does not allow for this give and take, for the tenant and landlord to have an interaction back and forth. That is not to say I am not voting for this section. It is just to point out that this is one of the advantages of going to the automatic hearing route.

Section 65 agreed to.

Section 66:

**The Chair:** There is a government amendment, as printed, I believe. Questions, comments or amendments to section 66 as printed?

**Hon Ms Gigantes:** I am going to make a comment. I hope Ms Poole, having pronounced herself on what happens in administrative review, will take a careful look at section 66.

**Ms Poole:** I was just about to give the minister my support for this section. Now I guess I will have to take a careful look before rushing in. This section does not change anything that I previously said, because what I referred to was the give and take between landlord and tenant. This is an entirely different matter, because the amendments under subsections 66(4) and (5) provide that the rent officer may view the premises and that the rent officer may direct an inspector to inspect the premises. I certainly support the attempt of the ministry to get the rent officers out of their little cubbyholes and into the real world so that they can actually see what is happening in the buildings. That still does not provide the give and take between landlord and tenant to which I earlier referred. Notwithstanding that, I will support this section.

Section 66, as amended, agreed to.

Section 67:

**The Chair:** Section 67: Questions or comments?

**Ms Poole:** This was another matter which actually was raised earlier, the Statutory Powers Procedure Act. It is only if there is a hearing that this particular act applies. As far as rules of evidence—Mr Winninger could speak to this far more eloquently than I could since I understand he is a barrister and solicitor in this province. One of the concerns I have about administrative review is that the administrator would not be bound by the Statutory Powers Procedure Act. I would see this as one more advantage to going the route of the automatic hearing as opposed to administrative review.

1630

**Hon Ms Gigantes:** If the sum of civilization is to see the Statutory Powers Procedure Act applied to life in Ontario, God help us.

**Ms Poole:** Not all life in Ontario, just the Rent Control Act. We are limiting in this particular case.

**The Chair:** Shall section 67 carry?

Section 67 agreed to.

**Ms Poole:** At the rate we are going through this legislation, if we do happen to pass all of it before the Conservatives arrive back, can we take the final vote tomorrow?

**Hon Ms Gigantes:** You are out of order, that was definitely out of order.

Section 68 agreed to.

Section 69:

**The Chair:** Questions, comments or amendments to section 69?

**Ms Poole:** I am not sure there is unanimity as to the need for pre-hearing conferences. Certainly, if we were in the situation where hearings were in the default position I would think the pre-hearing conference almost becomes extraneous, one more time-delaying tactic. I am wondering, particularly because my amendment to clause 56(e) specifically deals with pre-hearing conferences, whether perhaps we should not stand down section 69 and see whether section 70 would be affected as well.

Would the ministry be committed to pre-hearing conferences regardless of whether administrative review is in the default position or hearings?

**Hon Ms Gigantes:** The justification would be the same.

**Ms Poole:** You would not change your policy about pre-hearing conferences in any event.

**Hon Ms Gigantes:** That is correct. In fact, if you are going to have a situation where every application requires a hearing, then the pre-hearing conference is going to be your only room to breathe outside the Statutory Powers Procedure Act.

**The Chair:** Do I have a request to stand down section 69?

**Ms Poole:** Since the minister has said it will not affect the ministry's desire to have pre-hearing conferences, I think we may as well deal with this section now.

**The Chair:** Fine, further questions, comments on section 69? Shall section 69 carry?



**Mr Winninger:** Maybe I will start with a question of clarification. Is it the position of Ms Poole that the Statutory Powers Procedure Act should apply to pre-hearing conferences or did I mishear you?

**Ms Poole:** My comment was in reference to the fact that I am not totally convinced pre-hearing conferences are really necessary, particularly if orders under pre-hearing conferences are not going to have the same effect as a regular hearing. If you are going to have written findings from the pre-hearing conference, if you are going to have orders with all the same ramifications, if they are going to be dealt with under the Statutory Powers Procedure Act, then it seems to me you would be in the position where your pre-hearing conference is just repeating what the hearing is going to do.

**Mr Winninger:** I think you have answered my question, and if that is your position, I would strongly disagree with it because I know pre-trials and pre-hearings can be quite effective in narrowing issues, identifying issues, bringing the parties closer together and thereby shortening the duration of the actual hearings.

For example, in London Small Claims Court, the pre-trials dispose of 75% of all cases, so if you are looking at keeping the government's cost down—which I know you are mindful of—and if you are looking at alternative dispute resolutions—which your colleague Mr Chiarelli refers to constantly—then this kind of pre-hearing is ideal and I would urge you to reconsider your position.

**Hon Ms Gigantes:** I am tantalized, Mr Chair. Has Mr Winninger been through a pre-hearing conference under that legislation? They do not need lawyers there, do they?

**Mr Winninger:** I cannot remember, quite frankly. It has been over a year.

**Ms Poole:** And it has been a very long year at that, has it not, Mr Winninger?

**Mr Winninger:** It has been a challenge.

**Ms Poole:** I am not terribly comfortable with making any determination on this section because I am just not familiar with pre-hearing conferences and I am not a lawyer. If Mr Winninger assures me that they are useful, that they should be held and that they are going to save time, money and energy and bring people together as one happy group, then until I manage to make it home tonight and ask my husband to verify his opinion, I will go with Mr Winninger's opinion. Unfortunately, if my husband says no, the vote will already be taken.

Section 69 agreed to.

Section 70:

**The Chair:** Section 70: We have a government amendment as printed. Questions, comments, amendments to section 70, as printed?

**Hon Ms Gigantes:** This is one of the sections I find most difficult, because it says, if I am reading it correctly, that the only evidence is the stuff that gets filed with the application or is in response to the stuff filed with the application. Then it says that except where a rent officer allows additional stuff—I do not understand why we do this. Maybe Colleen could tell us.

**Ms Parrish:** The opening clause of subsection (1) says that except as provided in subsection (2), this is all that counts, and all we are really saying is that if you file evidence with your application, we have to look at it; we cannot direct it or say it is not relevant, we have to look at it. If you want to cough up some new evidence you are going to have to go through a process of having the rent officer permit parties to file that additional evidence, or the rent officer may be directing the party to give additional evidence, such as they find out that there are all these reports the parties have not been disclosing.

It really just says that this is the rule, except where the rent officer is exercising the powers in the statute to require additional evidence to be disclosed, or they have permitted someone who has made a good argument to file additional evidence.

**Hon Ms Gigantes:** What other kind of information might come? For example, in subsection 70(1)—you will forgive me, I am just so curious about this.

**Ms Parrish:** I always forgive ministers.

**Hon Ms Gigantes:** In 70(1) it says that the rent officer may only consider stuff filed with the application or given in a reply. Then 70(2) says that the rent officer can allow additional filings or request additional evidence. I do not understand what is being excluded in 70(1).

**Ms Parrish:** Any evidence the rent officer may just happen to have come across that has not been adduced as evidence.

1640

**Hon Ms Gigantes:** In other words, a newspaper clipping of five years ago that says a landlord was convicted or that the tenant was a perjurer.

**Ms Parrish:** Yes.

**Hon Ms Gigantes:** That is irrelevant and cannot be filed.

**Ms Parrish:** Somebody else might have filed it, but if they have not filed it, I cannot consider it.

**Hon Ms Gigantes:** It is very confusing to me. I have faith, though, that this is going to work.

**Ms Poole:** I was just comparing subsection 70(1) to the original one, and it seems the main change has been that the only written evidence in support of the application the rent officer may consider is the material filed with the application, so—

**Hon Ms Gigantes:** They both say "written."

**Ms Poole:** The original?

**Hon Ms Gigantes:** I am sorry.

**Ms Poole:** I was looking at the original version of Bill 121, and I am wondering if that is the major differentiation, that "written" has been added in so that the rent officer might consider verbal information, but if they are going to get something in, in writing, it has to be with the original application and reply. No?

**The Chair:** Legislative counsel may be helpful here.

**Ms Baldwin:** Maybe we can clear it up relatively quickly; I hope so. You notice subsection 70(2) is talking about filing additional evidence. That would suggest also



that it is in writing. As I understand the two subsections as a whole, the idea is that the rent officer considers what was filed in the proper way, as it was provided earlier, but in subsection 70(2) the rent officer is given discretion to add further evidence if, for example, a party comes along and says, "Gee, I didn't file this with my application, but I think it is really important and ought to be considered." At that point, since it is going against the general rules of the game, it does not automatically go in, but it is not automatically utterly excluded. Discretion is given to the rent officer. I do not think this is an uncommon sort of provision in the statutes.

**Hon Ms Gigantes:** What got me, I guess, was that in the subsection—I am really going to stop, Mr Chair—the rent officer was not allowed to look at any other written evidence, and I could not imagine what other written evidence might be there to create this prohibition.

**Ms Baldwin:** For example, in the case of the applicant, the earlier provisions say the applicant has to have all his or her or its written evidence in the application itself, so this would give leeway to a rent officer in what he or she considers appropriate circumstances to add other evidence.

**Hon Ms Gigantes:** I can understand that in subsection 70(2), but I cannot understand in subsection 70(1) what it is that the rent officer might have in front of him or her in written form but would not be allowed to look at under subsection 70(1)?

**Ms Baldwin:** This section makes it clear that if, in the case of administrative review, it was not in the application, they cannot look at it. They might have something in front of them about which the party is saying, "Consider this," that is coming up in subsection 70(2). They might have sent something in three weeks later and said, "I want you to use this, too."

**Hon Ms Gigantes:** These are process steps. All right, I think I have got my head around it. Thank you so much. Obviously I could not be a rent officer.

**Ms Poole:** I think I have this now. Is the type of situation you are trying to avoid one where the applicant submits written information, on day two comes back with more stuff, and then four days later is back with another slew of it. The rent officer really wants it all in at the beginning and has discretion in certain circumstances to say "Fine," but in cases where it is almost harassment because they keep getting bugged every day with something new, they can say, "Hold it, I already have all I am going to get."

**Hon Ms Gigantes:** Is that it?

**Ms Baldwin:** Sure.

**Hon Ms Gigantes:** It sounds good.

**Ms Poole:** Okay, I think we can go for that.

**The Chair:** I am glad that is clear. Shall section 70, as printed, carry?

Section 70, as amended, agreed to.

Section 71 agreed to.

**The Chair:** Questions, comments or amendments to section 72?

**Ms Poole:** I have just one question. Are the recommendations of the rent officer from the pre-hearing conference not binding on the rent officer handling the final determination at the full hearing?

**Ms Parrish:** If you look at subsection 73(4) of the reprinted version, it indicates that a preliminary order is binding. The preliminary order would deal with procedural issues only. It is not binding as to the issues in the hearing, but they could have a binding procedural order that says, "The hearings will be held in this location; These will be the parties that start out the hearing." You could still entertain additional parties during the course of the hearing, but those would be the initial parties.

Any other procedural orders, such as orders to divulge certain information or agreement to sit in the evening, agreement that, when you have five or six issues joined together and several applications, you will hear them in a certain order: Those are the kinds of things you might get out as procedural orders, related to the order in which the parties will adduce their cases and so on. Procedural orders are binding, but as to any matters of substance that were discussed in an effort to come to some sort of accommodation or agreement between the parties, that is simply a form to try to work that out. If it does not work out, you are into a hearing or administrative review, depending on what the parties have chosen at that stage.

**Ms Poole:** So the recommendations would not necessarily be considered to be findings.

**Ms Parrish:** They are definitely not findings. All you can have is a procedural order related to the kinds of issues I indicated before. There are no findings of fact or findings as to any matters of substance. It is only procedural things, the order in which the cases will be adduced, or whatever.

**Mr Winninger:** Why then is the word "procedural" not in section 73? I foresee parties coming to a pre-hearing conference wanting to settle the issue between themselves, perhaps making admissions without prejudice in terms of a future hearing, and the rent officer having this authority to actually make orders arising from what he or she has heard at the pre-hearing conference. Might it not be suggested that this be restricted explicitly to procedural orders?

**Hon Ms Gigantes:** That sounds so reasonable to me. There must be a reason why it has not been done.

**Mr Winninger:** I am sure there is.

**Ms Poole:** It is because you are a government backbencher. Nobody listens to government backbenchers.

**Mr Winninger:** It is different in our government.

**The Chair:** Order.

**Ms Parrish:** You are saying you would prefer this to say "procedural" instead of "preliminary."

**Mr Winninger:** I ask that it be stood down until you come up with wording or phraseology you might feel comfortable with, if indeed you seek to change it.

**Hon Ms Gigantes:** I would be quite happy to do that.

**The Chair:** Do we have unanimous consent to stand down section 72?

Agreed to.



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**The Chair:** Section 73: Mr Winninger, is this the same issue? Do we want to stand down section 73?

**Mr Winninger:** I think that would be advisable.

**The Chair:** Do I have unanimous consent?

Agreed to.

Section 74, as amended, agreed to.

Section 75 agreed to.

**The Chair:** Section 76: Questions, comments or amendments?

**Hon Ms Gigantes:** I believe this section relates to section 59, which we have stood down for the moment, and therefore we should probably stand this one down too. We are going to have a lot of standees in this waiting room.

**Ms Poole:** I am not sure section 76 will have to be stood down.

**Hon Ms Gigantes:** We are getting the same advice from counsel.

**The Chair:** We do not have unanimous consent.

**Ms Poole:** I am happy to if everybody feels we should, but it says "If there is to be a hearing," and even if—

**The Chair:** My sense, Ms Poole, is that I have no consent from anybody.

**Hon Ms Gigantes:** I think Ms Poole is correct.

**Ms Parrish:** The concern I have is with Ms Poole's amendment to subsection 76(1). Her amendment says: "The chief rent officer shall notify the parties in writing...unless they have agreed under subsection 59(2)"—which we are standing down to consider this issue—"to proceed by administrative review."

**Ms Poole:** I do not think that affects this, because the first line is, "If there is to be a hearing." It does not pre-determine that there will or will not be an automatic hearing, because even if you had automatic hearings, the parties might opt for administrative review. In this section you are just talking about if there is to be a hearing.

**Ms Parrish:** Yes, but your amendment goes on to say that the parties have agreed under subsection 59(2) to proceed by administrative review. If we do not make the changes you have proposed, then parties will not have agreed; they will simply have defaulted to administrative review. The concern is not with the amendment; it is not with the bill as printed by the government; it is with the amendment to this section you have proposed, because your amendment refers to subsection 59(2), having the parties agree to proceed by administrative review. Unless we make those changes, there is no section in subsection 59(2) that says people proceed to administrative review. The problem with section 76 is not created by the government bill; it is created by the proposed amendment.

**Ms Poole:** You are talking about the Liberal proposed amendment to subsection 76(1). I am sorry, Ms Parrish. I understood you were saying it was because we had stood down the Liberal amendment to subsection 59(2), not in reference to the Liberal amendment to subsection 76(1).

**The Chair:** Do I have unanimous consent, then, to stand down section 76?

**Ms Poole:** I think we have unanimous consent.

Agreed to.

Section 77:

**The Chair:** Questions, comments or amendments?

**Hon Ms Gigantes:** Everybody favours this one.

**The Chair:** Shall section 77 carry?

Section 77 agreed to.

Section 78:

**The Chair:** Subsection 78(1): questions or comments? Shall subsection 78(1) carry? Carried.

Subsection 78(2).

**Ms Poole:** The Liberal caucus will not be supporting subsection 78(2). We have deep concerns about allowing evidence to be garnered by telephone. I would certainly like Mr Winninger's comments in regard to this particular section, but it is my understanding that it is extremely unusual to admit telephone evidence, particularly as a matter of course. There is no way of proving you are actually talking to the person to whom you wish to talk. You have no way of verifying that this conversation is not taking place with somebody who is actually on the other side, relating to the application. I am extremely uncomfortable with it. From people I have talked to, I do not think this is normally done in the course of trials and official judicial hearings.

**Mr Winninger:** I recall there was a provision for this under the Residential Rent Regulation Act which the Liberals passed empowering the hearing officer to make telephone calls. If you look at the RRRA, you will find it in there, so it is basically a continuation. I do not know if the provision under the RRRA was quite as well drafted as ours, which provides that it be done in a way that any parties attending the hearing can hear both sides of the conversation. We may not have had speaker phones or three-way conference calls or whatever in those days. All I can say is that there was a provision in the RRRA and it did not seem to be of great concern then. If the parties attending the hearing can hear both sides of the conversation, that ensures there is fairness, equity and access to what is actually said.

**Ms Parrish:** I have certainly seen this provision in many other statutes; for example, in my childhood years spent at the Ministry of Financial Institutions these provisions were very common. Evidence adduced by telephone has to be used with some discretion, but there are some very good reasons why you would do this, such as distance. For these people who are having evidence being adduced there is a procedure under subsection (6) in which there is a report and there can be an inquiry and evidence. It is the case in administrative tribunals that the usual rules related to hearsay or what other people say are not treated the same as in the courts. There is an opportunity in the hearing to test this issue and the rent officer can disregard evidence he thinks may be faulty.

For example, if you are trying to obtain evidence from very elderly people, persons with disabilities or people

with young children, you are sort of forcing them to come out of their homes. These people may not be parties to the hearing at all. They may just be people who have evidence in the building, for example.

There is a provision in subsection (6) that the report of the agent or employee can be tested. If there is real concern about the adequacy of the evidence, it can be discounted, it can be challenged, but it is not uncommon to have the ability to obtain evidence through all kinds of mechanisms, and there is the opportunity to test it.

I should say we just recently passed similar provisions in the administrative review section allowing evidence to be obtained by telephone. That is in the RRRRA and I have not heard of cases where it has been abused. It is simply trying to reflect the fact that not all people in the province can come out to a hearing and there have to be other ways of collecting evidence for an administrative tribunal.

**Ms Poole:** There is a very basic difference between dealing with telephone evidence in an administrative review situation and in a hearing. Under the RRRRA, it was by administrative review. Obviously there is nothing to prohibit an administrative officer under the RRRRA from picking up the phone and saying: "This doesn't add up. Why doesn't it add up? What's happening here?" That is an administrative procedure.

Under the hearings, we are talking about a procedure under the Statutory Powers Procedure Act where there are specific rules of evidence and of obtaining evidence. It is a very formal procedure where I think we should have the highest standards of how evidence is obtained. I would ask the minister or Ms Parrish whether they have developed any procedure to identify the person whom they are asking to act as a witness by telephone.

**Hon Ms Gigantes:** If I could just begin by commenting that where the protections of the Statutory Powers Procedure Act are applied, as in a hearing, the use of the telephone would seem to be a more guarded procedure than it would be under administrative review, which does not involve that act.

**Ms Poole:** It is not testimony under administrative review. I think that is a very major difference.

**Ms Parrish:** I would say that under the RRRRA, in subsection 107(2), the board, when conducting an appeal in a hearing under the Statutory Powers Procedure Act, may question any person by telephone or otherwise. That is what we have now. I have to say there tends to be a preference for evidence given in person, but there are cases where that is not practical, given costs, given individuals' personal circumstances, given their disability or their fam-

ily situation. You still have the ability to test that evidence. There still has to be a report. It can be discounted if there is some concern.

I think your point is well taken that we should have internal procedures to be sure we are talking to the person, and there are a number of procedures. You phone them and then you ask them to phone you back, so you make sure it is that person. There are procedures to ensure that where this occurs, there are safeguards to ensure you are dealing with the right person, that they have notice and so on.

**Hon Ms Gigantes:** In any case, under the Statutory Powers Procedure Act, there can be people who claim to be other people. It will be governed by the same rules, if somebody claims to be a person and is not that person. The protections are the same as they would be if somebody made an appearance claiming to be another person.

**Ms Poole:** It is just much easier, if somebody is there in person, to tell whether they are the person in question. Not always would somebody be familiar with the person who is testifying, but I think there is more likelihood that they would.

**Hon Ms Gigantes:** Some of the other methods that have been suggested here probably should be incorporated as part of our operating guidelines, but I think the people who will be involved in this process will want to use all their wit and will to make it work too. I actually look upon this kind of change in the way we proceed as an important step forward. It is a bit of progress to allow people to use those modern means of communication that will give people who would otherwise be shut out of this process access to it. So I think it is important to provide for it in the legislation.

**Mr Winner:** I realize the hour is late and much has been said. I certainly can acknowledge that there are people whom the rent officer may seek to question and for whom it may pose a great inconvenience to come down to a hearing. If it can make matters of evidence any easier, I do not see why there would be any objection to having a telephone conversation in the manner contemplated in this section. The parties can hear what is said and can address any questions arising out of what is said. We are now almost in the 21st century, in the global village. Why not use these technological advances to enhance the way in which hearings are conducted?

**The Chair:** Shall subsection 78(2) carry? Carried.

The committee will adjourn until 10 o'clock tomorrow morning.

The committee adjourned at 1701.



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Wednesday 29 January 1992

## Journal des débats (Hansard)

Le mercredi 29 janvier 1992

### Standing committee on general government

Rent Control Act, 1991

### Comité permanent des affaires gouvernementales

Loi de 1991 sur le contrôle  
des loyers



Chair: Michael A. Brown  
Clerk: Deborah Deller

Président : Michael A. Brown  
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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON GENERAL GOVERNMENT

Wednesday 29 January 1992

The committee met at 1014 in committee room 1.

### RENT CONTROL ACT, 1991

#### LOI DE 1991 SUR LE CONTRÔLE DES LOYERS

Resuming consideration of Bill 121, An Act to revise the Law related to Residential Rent Regulation / Projet de loi 121, Loi révisant les lois relatives à la réglementation des loyers d'habitation.

Section 78:

**The Chair:** The business of the committee is to review Bill 121 clause by clause. Yesterday at the completion of the day we were about to take up subsection 78(3).

Questions, comments or amendments to subsection 78(3)? Shall subsection 78(3) carry? Carried.

Subsection 78(4). Questions, comments or amendments? Shall subsection 78(4) carry? Carried.

Subsection 78(5). I see that we have a Liberal motion.

**Ms Poole:** The Liberal caucus does have an amendment with regard to subsection 78(5). I wonder if we could stand this section down. I will give you my reason for requesting unanimous consent to do so. Yesterday we discussed accepting telephone evidence. I was quite uncomfortable with some of the things that were said in some of the discussion. Some of the facts brought forward by the minister and the ministry directly contradicted some of the information I had been given. I wonder, since we are having the rent wizard come to us this afternoon at 2 o'clock, if we could stand down this section and also talk to the rent wizard about telephone evidence or, in the event the ministry would feel it more appropriate to have somebody else deal with these types of questions, to invite that person.

**Ms Harrington:** Mr Chair, maybe you could clarify for me. We did have the discussion under subsection 78(2) with regard to telephone conversations, did we not?

**The Chair:** We have.

**Ms Harrington:** And that has been voted on?

**The Chair:** We have.

**Ms Harrington:** A decision has been made in subsection 78(2). Your amendment to 78(5) was to follow along with your concerns expressed in 78(2)?

**Ms Poole:** That is right.

**Ms Harrington:** My understanding is that the decision was made with regard to whether telephone evidence could be given. We did have a fairly full discussion on that. You are certainly welcome this afternoon to ask any type of questions of our expert.

**Ms Poole:** I am not prepared to entertain passing this section at this time. I had not wanted to do it in this manner, but if necessary I will raise it as a point of order. Yesterday we received information which at best could be

kindly called misleading. It could have a variety of other names, but it was certainly not accurate and it was presented to our committee as accurate information. I feel we voted on a section with information that did not accurately portray what is actually factual. I would like to reopen 78(2). I had preferred to do it in a kinder, gentler way, by asking the questions of the rent officer this afternoon, but if there is not unanimous consent to stand down this section, then I will do it in another way.

**Ms Harrington:** I am at a loss. I do not have the transcripts from yesterday but I do not know what you are referring to. Since this is your amendment raising this issue at this particular juncture, maybe this is the appropriate time to deal with it.

**Ms Poole:** If that is the preference of the parliamentary assistant, I am certainly willing to do it.

**Mr Mammoliti:** I am a little confused here. I apologize if I was not paying attention, but what is the reasoning behind it, Dianne, if you do not mind my asking?

**Ms Poole:** For Mr Mammoliti's explanation I will say to him that yesterday we had a fairly lengthy discussion of telephone evidence and the admissibility of evidence from witnesses by telephone. Certain information was given by the minister and Ministry of Housing that appears to have been grossly inaccurate. We voted on this section pursuant to that information and I am extremely uncomfortable with the fact that we did so. I had wanted to ask for unanimous consent to stand down this section until 2 o'clock this afternoon, at which time we will have the chief rent officer or ministry official come before us, to discuss some of these ramifications with that person and get his viewpoint.

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**Mr Mammoliti:** But the parliamentary assistant prefers to do it now.

**Ms Poole:** But the parliamentary assistant has said she prefers to do it now.

**Mr Owens:** I think that if what I am hearing is accurate, I gently suggest that what you are suggesting is that perhaps the minister misled the committee yesterday. If you feel that, then I think it is incumbent upon you to place what you feel is perhaps the correct information on the record before we make any decision as to whether we should stand this clause down, if this is what you are saying has happened.

**Ms Poole:** I would be happy to do that. Yesterday when I was talking to the minister about this section several assertions were made. The first was that this telephone evidence was used under the RRRA with the appeals board, which was called the hearings board under the RRRA. I have spoken to two members of the appeals board, one former member and one current. They have

both confirmed that under no circumstances did they ever accept evidence from witnesses by telephone and that, in the cause of natural justice, they did not communicate with witnesses at any time other than during the hearing. Telephone evidence was clearly not accepted. They followed this up by saying that they were reluctant even to accept affidavits, because of the fact that they could not cross-examine. But certainly in the case of telephone evidence it was very clear that for a number of reasons—first, identification; second, the lack of the ability to establish credibility, and third, by the rules of natural justice, which have always prevailed—the accuser and the accused meet face to face in the hearing to discuss what is happening.

**Mr Owens:** Can I ask you a question in response to that? Are you prepared to share the names of the individuals who provided you with that information, so that we can follow it up?

**Ms Poole:** No, I am not, but I would certainly be more than happy if we had a member from the appeals board. Obviously you must realize this information was given to me on a confidential basis because nobody wants to jeopardize his job.

**Mr Owens:** Sure. My intent is not to conduct a witch-hunt but to satisfy in my mind the validity of the statements that were made.

**Ms Poole:** I would be more than happy if this committee were to call any witness from the appeals board to substantiate or refute what I have been given by two separate members.

**Ms Parrish:** As a staff person, I would like to put on record that there are times when staff give information in which their recollection is faulty, they do not understand the question or they may not be very smart, but staff, including myself, never give information which is deliberately misleading. I just want to put that on record because I want to say that my staff and I do our very best to serve you in a non-partisan fashion.

I do not have the Hansards. My recollection was that I did not say that the hearings board staff do this now. What I said was that the provision is in the current statute and I read from subsection 107(2) of the RRRRA, which says,

“(2) The board”—which refers to the hearings board—“in respect of any appeal” from an administrative review “may, (a) conduct any inquiry or inspection of documents or premises that the board considers necessary; and (b) question any person by telephone or otherwise.”

That is the provision in the RRRRA and that was the reference I intended. If I suggested something else in the course of conversation, I will have to check that. My recollection was that I was referring to the existence of this provision in the statute. If at any time during the course of the hearing I have given information which is incorrect, I do want to say to the committee that I am most sorry and that if we do this, it is only entirely through inadvertence, fatigue or perhaps my own not being very smart. My recollection was that I referred to the statutory provision and not that practice of the board.

If Ms Poole would like, I can make further inquiries to the board as to whether there have been any examples

where they do this. I do know that in administrative review it is quite common for us to call people and, for example, in subsection (5), where we may be doing an inspection or whatever, it is quite common to phone people and say, “Do you have your accounting report?” or whatever.

I just want to put that on record, and certainly I will read Hansard. If I was incorrect, I am sorry. I know I was not deliberately attempting to mislead.

**Ms Poole:** I would certainly like to respond to Ms Parrish. First of all, I would like to say that in no way, shape or form was I intending or certainly wanting to give anybody the impression that there was anything deliberate in this. Second, I have the absolutely highest regard for Ms Parrish and the information she provides us with. I think, without exception in this room, she knows more about this legislation than any other person, and she is extremely intelligent, knowledgeable and helpful to us. This is why I had actually wanted to deal with it in another form this afternoon by talking to the chief rent officer or representative about this matter, because I did not want any inference that there was something inappropriate done.

However, this committee—certainly myself; I cannot speak for all committee members—when I heard that yesterday, I was under the impression that the current practice under the RRRRA was that telephone evidence was considered by the appeals board. That was certainly my own impression. Whether other members had that interpretation I could not say. I was quite—not upset, but concerned about this last night.

Because my husband is a lawyer, we have a large circle of lawyer friends, so I contacted six different lawyers who have acted for various quasi-judicial boards and tribunals, because the other thing that was said yesterday was that this is becoming a more common practice. I wish I had the Hansard. I actually phoned Hansard this morning to see if it was ready, and of course it is too soon and would not be available until this afternoon, but there was a comment made about the fact that this is a more common practice now, to use telephone evidence. Each of the six lawyers I talked to say that it is unheard of in any quasi-judicial tribunal or hearing to use telephone evidence.

These lawyers collectively have acted extensively with the Ontario Municipal Board, the Environmental Assessment Board, the Workers' Compensation Board, the Workers' Compensation Appeals Tribunal, the Immigration and Refugee Board, the Social Assistance Review Board, the Assessment Review Board and the UIC appeals tribunal, so you can see their experience is quite extensive.

What they said to me is that the only condition under which telephone evidence was admissible—and this is again relatively rare—was by argument and when the legal counsels were having a conference call. So you are talking about the group of lawyers who are acting for the various parties having a conference call. But they were all very emphatic that you do not do it with witnesses.

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There were a number of reasons. The first reason they gave was the difficulty of identification. Even if you phoned a number which is allegedly the number you are



trying to reach to talk to this witness, call-forwarding mechanisms and all sorts of other things might create difficulties.

The second and certainly one of the major concerns was the test of credibility. As I said, dating back basically to I think the times of Henry II with the judicial system, it has been the practice that it would be face to face in a tribunal or a court of law, and there are reasons for this.

The first thing is that facial expressions or body language are extremely important in determining credibility. Whether somebody suddenly starts sweating profusely at a certain point or gets nervous, starts contradicting himself under the gimlet-eyed glare of the counsel, certainly these things are all helpful in this face-to-face discussion.

There is also the matter of swearing in. They said if you have telephone evidence, it is impossible to determine whether the person on the other line is intoxicated or under the influence of drugs. They also said that there was a very major problem in that the person might be coached or scripted or in fact a gentle type of coercion might be used.

I will give you two examples. There could be people who are not well versed in this kind of thing. They are on the other end of the telephone, nobody can see them, and they are reading from a script that somebody has asked them to read. Or somebody can be sitting beside them going like this or like that or coaching them. It could be a landlord's representative, for instance, in another type of scenario where the landlord's representative has said, "We'll do these nice things for you if you testify for us," and he is sitting there coaching the witness. It could be anything. But the major point they were making is, how can the decision-maker assess the credibility?

**Mr Owens:** On a point of order, Mr Chair: I understand what Mrs Poole is saying, but I am wondering how this goes to her request that we stand the clause down.

**The Chair:** This is an unusual thing.

**Mr Owens:** I do not think discussing how we produce evidence in hearings is germane to the request.

**The Chair:** This is an unusual debate in terms of procedure, but I think it is helpful. What I think we are trying to ascertain is, do we have the facts right?

**Mr Owens:** I think Mrs Poole has made her point with respect to the reasons why she would want the clause stood down and it appears she is now going into presenting argument on why we should not have a clause with respect to collecting telephone evidence. I think we have crossed the line.

**The Chair:** However, Mr Owens, to be fair, I believe I heard a request from Mrs Poole to justify her reasons.

**Mr Owens:** I thought she did that in the first 60 seconds of her comments.

**Mr Jackson:** On the same point of order, Mr Chair: I believe it would be helpful to completing this process if we revisit the request to stand down this section so we can proceed immediately, and more appropriately revisit the clause after we have had occasion to discuss the matter with the rent officer designate. I think that might come closer to Mr Owens's concerns, and I am sure Mr Mammoliti has had his question answered. I think that

would be helpful to the process. I have not moved to participate in the debate and would be willing to once I get the signal that this is what we are going to debate for the next hour or two until the officer comes at 2 o'clock. Maybe it would be helpful if we could just stand it down and get on, because I really would like to proceed with this legislation.

**The Chair:** It was a point of order of course, and as I said, this is an unusual debate. But I believe the committee has operated quite well in the last few days, if not all the time, and in the spirit of cooperation, I am allowing this discussion.

**Mr Owens:** True, and I appreciate the comments Mrs Poole is making. But I think Mr Jackson makes a good point that, in terms of discussing the issue, it might be better if we hold that until later today when the officer is here, as well as when we have had a chance to examine the Hansard. My colleagues may not necessarily agree with that.

**Mr Jackson:** I would like to move to stand down this section.

**The Chair:** We have a request for unanimous consent to stand this section down.

Agreed to.

**The Chair:** Subsection 78(6). Questions, comments or amendments to subsection 78(6)? Shall subsection 78(6) carry? Carried.

Section 79:

**The Chair:** Questions, comments or amendments to section 79? Shall section 79 carry? Carried.

Section 79 agreed to.

Section 80:

**The Chair:** Questions, comments or amendments to section 80, as printed?

**Mr Mammoliti:** Mr Chair, section 80, not subsection 80(1). Am I correct?

**The Chair:** I called the entire section.

**Mr Mammoliti:** Perhaps you can help me, Ms Harrington. We have a government motion here, if I am not mistaken.

**The Chair:** I said "as printed."

**Mr Mammoliti:** As printed in our book?

**The Chair:** Yes.

**Ms Poole:** Sorry, I was not working with the revised copy. I was just going to say I did not have an arrow indicating it was a printed amendment. Thank you.

Section 80, as amended, agreed to.

Sections 81 and 82 agreed to.

Section 83:

**The Chair:** Questions, comments or amendments to section 83? Ms Poole, do you have a Liberal amendment?

**Ms Poole:** Yes, I do, Mr Chair.

**The Chair:** Mrs Poole moves that section 83 of the bill be struck out and the following substituted:

"Frivolous or vexatious proceeding

"83(1) A rent officer shall dismiss a proceeding if, in his or her opinion, the matter is trivial, frivolous or vexatious or has not been initiated in good faith.

"Fraud

"(2) A rent officer may require an inspector to investigate the conduct of a proceeding if he or she has reason to believe that a party may have filed documents that the party knew or ought to have known were fraudulent.

"Idem

"(3) A rent officer shall dismiss a proceeding if he or she finds that the applicant filed documents that the applicant knew or ought to have known were fraudulent.

"Idem

"(4) A rent officer shall not consider any documents filed by a party other than the applicant if he or she finds that the party filed documents that the party knew or ought to have known were fraudulent.

"Idem

"(5) A rent officer may also award costs against a party if he or she finds that the party filed documents that the party knew or ought to have known were fraudulent."

An explanation?

1040

**Ms Poole:** This amendment is in the same spirit as the one on coercion and misleading representations. This section basically beefs up the act in areas where there has been a trivial, frivolous or vexatious application made or where something has not been initiated in good faith or if there were fraudulent documents.

One of the problems I have encountered over the last number of years is that there was no actual penalty for somebody who did submit a fraudulent document or was introducing a trivial, frivolous or vexatious element to the matter. That is why I added this section about costs, saying that the rent officer would have that jurisdiction to award costs against a party if the party filed documents that were fraudulent. The cost deals specifically with the fraudulent part, because we feel this is the most serious case by far.

I hope the government will support this particular amendment. If there is anything about the wording that they feel is not appropriate or if they have any difficulties that can be remedied, I certainly would be more than willing to accept friendly amendments and put them in a format acceptable to the government.

**Ms Harrington:** We are considering this. I am not sure why we do not have something in writing. I wanted to ask you about the change in wording from "may discontinue" to "shall dismiss." What is your view of how that changes the legislation?

**Ms Poole:** We want to strengthen it basically. I do not have much use for people who do things out of spite or to be vexatious or who do things that are trivial or frivolous. It could be on either a landlord's or a tenant's part for that matter. A landlord might possibly, for no other reason, in certain circumstances put in an application to harass tenants and not have justifiable grounds but for that reason. By the same token, sometimes a tenant might do the same thing. Particularly now with the rent reduction sections about neglect and inadequate maintenance, a tenant could insti-

tute a frivolous, trivial or vexatious application. We feel that in either situation it should not be tolerated. The minister mentioned yesterday the cost of hearings and the cost of the system, and it would seem to me we want to really discourage this.

Giving the rent officer the discretion does not seem to make sense, because why would we allow a frivolous or vexatious application or a fraudulent matter to proceed? I cannot think of circumstances where these cases occur where the rent officer should have discretion. I think it is fairly clear-cut. We also want to make sure that people are discouraged and do not enter into a great debate about whether the rent officer should or should not be doing it.

**Ms Harrington:** I wanted to ask Ms Parrish how she views the change from "may discontinue" to "shall dismiss."

**Ms Parrish:** We have discussed this with the minister. I do not think she has a problem with moving from "may" to "shall" and your points are well taken, similar to what she said yesterday, to my recollection.

The difference that we see here is a very minor one. I do not know whether you intend it or whether you do not. We say "discontinue"; "dismiss" is different in the sense that if you dismiss you have to issue an order and it involves a lot more song and dance. We have to have written reasons and all that jazz. I guess I am not sure whether you mean "dismiss" because you want us to issue an order or whether you mean "discontinue."

**Ms Poole:** Actually, I thought "dismiss" was a stronger word. I thought "discontinue" might mean that it can be continued at another time.

**Ms Parrish:** No. The only difference is that if we dismiss we have to issue an order saying, "We dismiss your case and this is why." "Discontinue" means that just your application—

**Ms Poole:** It dies?

**Ms Parrish:** It dies, right.

**Ms Poole:** So it could not be revived. If that is the case, Mr Chair, I would be pleased to put it back to the original wording and use "discontinue" rather than "dismiss." I thought I was strengthening it but obviously it just makes it a more difficult task.

**Ms Parrish:** The other point we would make here is that in subsection (2) and subsequently you used the term "fraudulent." The term "fraudulent" is not used in the act. The term that is used in the act and the offence that relates to this is "false and misleading information in applications." If the intent of the section is to tie this into a prosecution under the statute, it does not work.

The offence as set out in clause 124(1)(a) on page 70 of your reprinted version is not "fraudulent," but "false and misleading information." The word "fraudulent" introduces this other thing in which one could wonder whether it was intended to be something other than false and misleading information. Usually "fraudulent" conjures up a vision of "fraudulent" under the Criminal Code. I am not sure we want to have to meet those tests, which are probably different from our tests, so there was also some uncertainty as to that.



The last thing I would say is that we do have some concern about the direction in subsection 83(2) that there should be an investigation in every case. We certainly have the capacity to do this, because if you changed all this language to "false and misleading," you would have an offence and it would then tie into subsection 124(1). The problem with always doing an investigation is that you may have cases in which there is fraud at a criminal level. When that occurs the police come in and we back out because it is inappropriate for us to be in there doing investigations in the middle of a police investigation. That is the protocol, to draw the line between provincial prosecutions or proceedings and criminal prosecutions and proceedings.

I would have some discomfort level at requiring this investigation when in fact we may have a situation involving white-collar crime in which the OPP tells us not to do this because we may in fact tarnish their investigation. That does happen. I do not want to give you the impression that this is a widespread practice, but it does happen. I guess we are somewhat cautious, when exercising prosecutorial powers, to exercise them in a way which does not in any way constitute an inappropriate whatever. I guess our concerns are largely those two language issues around "false and misleading" and "discontinue," and then some concern that subsection 83(2) may be problematic because of this unusual situation, but it does occur.

The last is that our act does not have any provisions for rent officers to impose costs. There are no tests for the impositions of costs. For example, if we impose costs we would have to say what kind of costs: on the Supreme Court scale, on the county—there would have to be some test. We have no powers in the statute for rent control officers to impose costs. We are reluctant to get into the imposition of costs because of the nature of the parties before the tribunals and the added element of the imposition of costs in all the circumstances. We are reluctant to get into the imposition of costs. However, we certainly would be prepared, if the member were interested, to work on those other areas of the amendment and perhaps rework it to retable it, if that is agreeable to the members of the committee and to the proponent of the motion.

**Ms Harrington:** I believe Ms Parrish has explained why we have not drawn up something further because we have concerns about subsections (2) through (5). With regard to subsection (1), I believe we have agreed that we would look favourably on your amendment to change "may" to "shall." That is my understanding of our conversation, if you would like to proceed on that basis.

1050

**Ms Poole:** I would certainly be quite amenable to going with Ms Parrish's suggestions in this regard. Certainly with regard to "fraud," if indeed "fraud" is only considered under the parameters of the Criminal Code, if the word is used in that context, then it makes sense instead of that to change it to wording which corresponds with what is in the act. We are quite happy to use "discontinue" instead of "dismiss" if it has the same force and effect, but without the bureaucratic difficulties.

As to costs, I knew there was no provision for costs under this statute. My concern is if there is—I will use the word "fraudulent," but I guess I should the words "false and misleading"—if there is a situation where a party knowingly files this type of documentation or ought to have known that it was misleading information.

I guess there is a penalty in that if the landlord has gone ahead and done all the capital repairs and his or her application is dismissed, then he or she will not be reimbursed for the cost of those capital repairs. I am not sure I see a penalty on the tenant's side if it were a tenant applicant who did the same thing. The application is obviously dismissed, but it would not be any monetary penalty. I am just trying to get some sort of provision that would deal with both sides in the same way, in a very fair and partial way, but I certainly understand the difficulties you have outlined about not wanting to get into cost. Would you have any other suggestions for something that we could substitute for subsection (5) which would have the same intent without the same logistical problems?

**Ms Parrish:** I should say that if there is a prosecution, the person can be fined and the fines are fairly substantial. It does seem to me that it is the ultimate penalty that you are exercising if someone has abused the system. Of course if you have a fine it is the crown that gets the money; it is not the other person. On the other hand, if this is a landlord, for example, he may have tabled information which is false and misleading. But he may in fact have justified capital increases and he will lose them, so he has paid that penalty.

In the case of tenants, they may have brought in evidence that was false and misleading against the landlord, but they may in fact have other good evidence which they have now lost and therefore they lose their opportunity to reduce the rent, so at some level these individuals may already have been penalized. They may also be prosecuted and they may have a fine imposed upon them which, depending on a number of elements that the court would consider, could be fairly significant.

It was a lot of trouble for me to go to this hearing. I had to come and take time off work and all that kind of stuff but I guess that is an issue throughout the statute. People may feel they have come and people will ask for an adjournment, for example, because of illness or whatever and they have to take time off work. It is just not here that those kinds of inconveniences occur. Then I think you do have to deal with the wider issues.

I do not have a magic solution. I think that the current policy, as I understand it, is a reluctance to introduce these cost powers. Given the kind of decision-making and the kinds of parties that will be before the hearings it does not seem appropriate. It is not like you are dealing with two developers going head to head at the Ontario Municipal Board or whatever. I do not know whether, and perhaps my colleagues can help me, there are cost proceedings in the RRRA now. Does the hearing board have the ability to impose costs? I do not think so. I know that the Ontario Municipal Board does have the power to impose costs but it is very rarely used, and it is usually only used in very extreme kinds of cases.

**Ms Harrington:** Just briefly, in the interest of trying to move ahead, I believe we have agreed to an amendment to subsection (1). I believe, hearing that, we would like to have a brief look at the costs. In the interest of moving on, maybe we could then stand down the rest of Ms Poole's amendment. Hopefully this will not make too many sections go down.

**The Chair:** It is increasing. I have Mr Mammoliti on my list.

**Mr Mammoliti:** Thanks, Mr Chair. On a personal note, I do not mind standing it down, with the understanding that we are going to look at amending the amendment per se. To what degree, I guess we would have to talk about.

**The Chair:** The Chair might suggest that one of the things we might do is have Ms Poole withdraw this amendment and have another amendment replace it. That is another option we have, and to stand down the original section.

**Ms Poole:** I would be happy to withdraw this amendment. Legislative counsel, together with ministry representatives, has—

**Ms Baldwin:** No, I have not talked to the ministry.

**Ms Poole:** I am sorry. Legislative counsel has come up with a drafting suggestion which incorporated the concerns of the ministry plus the intent of our resolution, which is satisfactory to me. What I would propose is that she pass it by the ministry for their approval, it could be typed up over the lunch hour, and we could vote on it this afternoon without further debate.

**The Chair:** Mrs Poole has withdrawn her amendment to section 83. Could I have unanimous consent of the committee to stand down section 83?

Agreed to.

Section 84:

**The Chair:** Questions, comments or amendments to section 84? I believe it is an original section from the original bill. Questions or comments? Shall section 84 carry? Carried.

Section 84 agreed to.

Section 85:

**The Chair:** Questions, comments or amendments? Again, we are dealing with a section as originally in the bill. Shall section 85 carry? Carried.

Section 85 agreed to.

Section 86:

**The Chair:** Questions, comments or amendments?

**Ms Poole:** Mr Chair, I have an amendment that we have labelled 86.1. Do we deal with this now or do you deal with 86 first?

**The Chair:** I will deal it after we deal with this particular section. Questions or comments to section 86? Shall section 86 carry? Carried.

Section 86 agreed to.

**The Chair:** Ms Poole moves that the bill be amended by adding the following section:

"Hearing recorded

"86.1(1) Every hearing shall be recorded in its entirety in a manner that permits the preparation of a typewritten transcript or audio recording.

"Transcript

"(2) If a party so requests, the official examiner or person who recorded a hearing shall prepare and complete a typewritten transcript of the hearing within four weeks after receiving the request or an audio recording of the hearing within two weeks after receiving the request."

An explanation?

**Ms Poole:** I think this amendment basically speaks for itself, but of course that shall not prohibit me from speaking forth and to it. The reason we have introduced this amendment is that both sides to hearings and applications have complained they have nothing afterwards as evidence of what went on or what was said. So we have provided two options. The first is that there be a typewritten transcript; the second is that there be an audio recording. The audio recording, I believe, would be a far cheaper and more cost-effective way of dealing with it. The typewritten transcript, I understand, is a fairly expensive process, so the ministry would then have to take that into its calculations. But it certainly would be, from my understanding of the way this is drafted, that this would be at the option of the ministry, not the option of the person requesting the material.

We felt that four weeks was a reasonable amount of time to provide a typewritten transcript, and two weeks for an audio recording, but again, if the ministry feels these time frames are inadequate in any way, we would certainly be prepared to reconsider the wording of this particular amendment.

1100

**Ms Harrington:** I certainly appreciate the intent of the Liberal motion, but our staff has advised me that we are looking at close to \$1 million in cost. We feel we want to keep this process, as we discussed with the issue of cost awarding, to as simple a level as possible and as efficient and cost-efficient a level as possible. We have looked at this, but at this point we do not want to get into this kind of obligation for paperwork. The last point is that if people would like to know what happened, they are certainly free to bring in a cassette and record it themselves. That is no problem.

**Ms Poole:** Was that estimate of \$1 million for the transcripts or for the audio recording?

**Ms Harrington:** I was thinking that myself. I have the written number here, \$950,000. Your bill actually says "or," so I am wondering which one that is too. Do you happen to have an idea on that?

**Interjection:** It is both the recording and the transcription.

**Ms Harrington:** Both. So you have estimated a written transcript and an audio of each hearing.

**Ms Poole:** As I mentioned, I think the typewritten transcript would be considerably more expensive than the audio. Even if the ministry would provide for the audio recording, it would at least give some opportunity for people



to know what was said at the hearing and to have that available. Would the ministry have any estimates for what it would cost just for the audio portion?

**Ms Harrington:** No, I do not have a number for just audio.

**Ms Poole:** I wonder if legislative counsel might have any information at all about written transcripts, which are quite commonly used in court proceedings. The only reason I know they are quite expensive is because I was a law clerk for five years. I know it was fairly unusual when we had to hire a private person to transcribe, and it was extremely expensive. But my understanding is that recording is a fairly cost-effective way. Maybe Hansard would be able to tell us, since that is their job.

**Ms Harrington:** Their stock-in-trade.

**The Chair:** Probably not.

**Ms Harrington:** I think at this point it is interesting looking at cost—

**The Chair:** I am told that our reporter may be of some assistance.

**Mrs Marland:** While waiting, could I ask a question on some other matter? It is a matter of process on something that was handed out this morning.

**The Chair:** I think we will wait for a moment for that.

**Ms Poole:** I do have some additional information to share with the committee. It is estimated that if you had a written transcript, it would be \$200 a day simply to have the reporter show up. Then it is approximately another \$500 per day for the actual written transcript. So it appears that is an extremely expensive proposition.

On the other hand, if it was for the audio recording, it would be approximately \$5,000 for the setup in the hearing room. The additional costs involved would be for the tapes. These could either be passed back to the parties involved or absorbed by the ministry. But it would seem to me that to have the audio recording would be an extremely cost-effective way. If the ministry is willing and prepared to accept this, I would certainly be willing to amend my amendment with a friendly amendment or withdraw it or whatever, to provide an opportunity for typewritten transcripts to be eliminated from the motion and audio recording to be the only viable option.

**Ms Harrington:** One further piece of information I wanted to give you is that the people can request that it be taped. So that option is there. The ministry has made the decision that we do not want to be obligated to this service, but it can be done for those who want it. That is my understanding. Let me just check to see if I have anything further.

**Ms Poole:** I just wondered if perhaps we could get a confirmation. I did not notice that in the act itself, although it may be there. It has been some time since I have read the entire thing through. I certainly have not got it quite memorized to date, although some sections I think I do. But I wonder if it is directly in the act that an applicant or party can request the tape recording, or if it actually is contained in government policy as opposed to legislative form.

**Mr Mammoliti:** May I ask a question?

**The Chair:** You were next on the list, Mr Mammoliti, but if that can help, sure.

**Mr Mammoliti:** It is my understanding that officers in the chair usually do tape hearings. It is practice apparently. I know that at every hearing I have gone to, I have seen them tape it. I would like to ask whether or not it is already practised, and if it is, I would assume it would continue.

**Ms Parrish:** The Statutory Powers Procedure Act does not require that you have a recording, but I think the practice does vary from tribunal to tribunal. Often there are cases where the parties will request that there be a court reporter of some kind, and where they do, that is often permitted. It is sometimes required that the parties bear that cost, because it is very expensive. Often the parties know in advance that they anticipate this going to the courts and so on, and they want to have a full transcript.

1110

But I do not believe, although I will confirm that, that the hearings board currently does this in every case. I think they do it in some cases. I guess the issue is that this is expensive. There is a large volume of hearings, many of which are dealing with relatively straightforward issues. It does become a cost issue where you automatically do this and nobody even wants it. You have paid a substantial sum of money, and in the end nobody wants the transcript. So the concern is to have a reasonably cost-effective system. You can order it—the Statutory Powers Procedure Act allows you to do this—but I know it is quite common in other tribunals that I am familiar with to require the parties to bear the cost themselves.

The point we have is twofold: whether this is cost-effective when you are recording a hearing when nobody has asked for it as opposed to where there has been a request for transcript, and second, it is quite expensive and there have been a lot of comments made about how much money it will cost to administer the statute. So the concern is partly that it could be wasteful, because nobody wants this transcript; nobody has asked for it. Second, it does cost money.

**Ms Harrington:** Thank you, Ms Parrish. You have made the ministry's position quite clear. We do not want to get into a blanket situation of doing it in all cases.

**Ms Poole:** I certainly understand the comments about the cost with regard to written transcripts, but if it is available to people through the Statutory Powers Procedure Act, then it would seem to me that the ministry would have to have this type of equipment in the hearing room anyway. They would have to provide it. Then the question would be whether there is a cost pass-through back to the parties involved.

I would think the cost pass-through back would be quite minimal if you are looking at the audio recording, because you are just really talking about the cost of the tapes. I have been at appeal board proceedings, called the hearings board under the RRRRA, where they have not been taped and it has made it somewhat difficult when the hearing goes on for a number of days and somebody is referring to what was said and then you go back to people's recollection



of whether this was what was said. So I certainly think from a technical viewpoint it would be desirable to have it.

Another option would be that the audio recording be available. However, if any party wants a written transcript, that cost would be fully passed through and in fact paid in advance by the party before the ministry ordered the written transcript, which could be done from the audio recording. Having the audio recording automatically provided certainly would allow for that, and yet at the same time the cost to the ministry would be quite minimal.

If the ministry is willing to consider this, I am certainly amenable to changing this amendment to conform with the way in which you want it dealt with.

**Mr Mammoliti:** With any legislation, individuals are bound to follow the steps of that legislation. Both the landlords and the tenants are forced into a procedure which we are talking about now. I do not think it is unreasonable, to be honest with you, in terms of audio. In terms of transcripts, I would agree that perhaps if somebody wants a copy they should pay for it. I would be willing to bet, if the ministry looks into it, that we have been spending money on audio anyway in most of the hearings and that it will not be that much more in terms of a monetary cost to the ministry. I do not know. On a personal note, I would not mind looking into it in terms of the audio.

**Mr Winninger:** This is more by way of a clarification of the amendment. If the party were requesting a transcript, is it Ms Poole's position that the party would be paying the per-page cost of the transcript being prepared?

**Ms Poole:** Yes, Mr Winninger. That is my new, improved position.

**Mr Winninger:** Was that in writing, or is that something you have said today?

**Ms Poole:** No, that is just something I have said recently when we were discussing the exorbitant cost of these transcripts. I made an offer to the ministry that if it was willing to accept that audio recordings would be provided and written transcripts would be paid for by the particular party in advance and subsequently provided for the ministry—this, of course, would be only on request—then I would certainly be willing to amend the wording of my particular motion to conform with what the ministry feels is appropriate.

**Mr Winninger:** What I suppose you are suggesting by your amendment is that even though right now some rent officers may record proceedings and some may not, for the sake of consistency you are arguing that it should become the practice in all hearings to record evidence given.

**Ms Poole:** That is right. Right now we have an administrative review process, so they do not record, as far as I am aware, under any circumstances. What I was referring to was the hearings board which dealt with appeals. I know sometimes they did audio recordings, because I was there when it happened. I have also been present at appeals where the members of the appeals board were unfamiliar with the particular equipment and could not get it to work and threw up their hands and said, "Let's go ahead." Those were the times when it was quite difficult later in the hear-

ing process when we did not have any type of audio transcript to go back to.

**Ms Harrington:** Just one brief comment before we make a decision on this. In remote locations we do not have the equipment, so there are difficulties in having a blanket policy on this.

**The Chair:** Thank you. Further questions and comments on Mrs Poole's amendment? Shall section 86.1 carry? All in favour? Opposed?

Motion negatived.

**Mrs Marland:** On 15 January Ms Poole and I requested that the ministry supply a list of people who presented briefs at the consultation meetings held by the ministry on the rent control issues and options paper. This morning we have been given a list. Is this a complete list? It says it is a list of presenters at public meetings chaired by the Honourable Dave Cooke, which may be the case, but I am certainly aware of a meeting chaired by the still honourable—but not by title—Don Abel in Mississauga, and that list is not here, nor does the list indicate what we were looking for, obviously, which was who these people represented, whether they were property owners or tenants. When we raised the question, Mr Chairman, we did not ask for a list of meetings of the people.

**The Chair:** Perhaps to be helpful I could have the clerk read exactly what the request was of the committee.

**Clerk of the Committee:** "It was agreed the ministry would provide the report resulting from the ministry consultation process preceding the introduction of Bill 121 and to provide a list of the participants in that process and each person's position on the issue."

1120

**Mrs Marland:** Obviously this is not in response to that. It does not fulfil the request that was made, so I am still asking that the ministry comply with the request of Ms Poole and myself. I am wondering if we will have that list now before we complete at least these clause-by-clause hearings. When can we expect the list we asked for?

**Ms Harrington:** Is it my understanding that you want the position of each of these people? Is that what was omitted?

**Mrs Marland:** No.

**Ms Harrington:** No?

**Mrs Marland:** That is one of the things that was omitted.

**The Chair:** Mrs Marland is referring to a motion that was made by this committee.

**Clerk of the Committee:** It was actually an agreement.

**The Chair:** It was actually an agreement of what the request was.

**Mrs Marland:** The point came up, madam parliamentary assistant, because the point was being made at the time that there was a lot of input by the public into the legislation. We were interested to know what the public said and from what point of view they were commenting and who they were. We have been given a list of about five



cities—I have not counted them—with just names. It does not tell us whether they—

**Ms Harrington:** I think I can clarify.

**Mrs Marland:** Excuse me. Let me just say that I do not know how many cities the ministry held these meetings in, but Mississauga is not even on this list, and that was the one I am aware of that I attended. So we need to have a complete list—this is not complete—and we need to meet the request that we made which was the point of view that these people were coming from.

**Ms Harrington:** I would like to do the best I can. The next day following your request, or that afternoon possibly, you were given the discussion paper that resulted from—

**Mrs Marland:** Oh sure, but I already had that.

**Ms Harrington:** Yes. So that gave you the idea of the types of discussions and what these people were saying. At that point I remember mentioning that maybe the names of the presenters were at the back of the paper, which they were not, and therefore I believe you now have the names of the people who presented. But I understand there were three types of meetings held: the ones with Dave Cooke, the ones with myself and the ones with Don Abel. This list reflects just the ones that were held with Dave Cooke.

**Mrs Marland:** So we only have a third of it.

**Ms Harrington:** It is incomplete.

**Mrs Marland:** Yes, it is incomplete.

**Ms Harrington:** But in terms of what they said, the discussions, that was in the paper.

**Mrs Marland:** I already had the summary of what they said, but it was not identifiable. The point is, I am quite sure the clerks at all those public meetings—for example, the first name in Ottawa is Eric Chipley. I am sure the records the recording secretaries had at those meetings would show whether Eric Chipley was representing himself, tenants or property owners. I do not expect to get a list that says “Eric Chipley said ...” but I would like to see “Eric Chipley, property owner” or “Eric Chipley, tenant.” Obviously, when they start to speak they identify their interest in the green paper for discussion purposes. I do not think it is a very complicated list that we asked for.

The overall summary is just an extract of somebody's compilation of those three sets of hearings, so we need the names from the three sets of hearings and we need the groups they represented.

Interjections.

**Ms Harrington:** I have been told that in some cases people came to these meetings who were not identifiable as you would think: “I am a manager,” or “I am a superintendent” or various types of people. Some of them did not specifically identify themselves around the issue. Certainly they would all have had a particular interest—

**Mrs Marland:** There may be a few, but you cannot do a compilation such as the one you have unless you knew who was saying what from what base. Everybody did not come cloaked in anonymity, I can assure you.

**Ms Harrington:** No.

**Mrs Marland:** So can we have the complete list and can we have their association?

**Ms Harrington:** I will ask staff to reply.

**Ms Parrish:** In some cases you are right, Mrs Marland. People stood up and said, “I am so-and-so and I am representing the southwestern blah blah blah.” In other cases they just spoke from the floor. They got up. You might be able to guess from what they said what position they were representing, but they did not say who they were. They just said, “I’ve lived in my community for 30 years and I have strong views on this,” or whatever. They did not say, “I’m a landlord,” “I’m a tenant,” or, “I represent a ratepayers’ group.” Sometimes they did, sometimes they did not. We did not make it a condition of their participating in the public meetings that they identify themselves other than by their names.

**Mrs Marland:** You knew ahead of time who was taking part.

**Ms Parrish:** There were two parts to the public meetings. One was a scheduled part in which people asked in advance to be scheduled to speak.

**Mrs Marland:** Right, so you knew who they were.

**Ms Parrish:** In some cases we only knew their names. That is all they told us. In other cases they did tell us who they were. Then there was a public part where people just got up from the audience and said things. They often did not even really identify their full name or anything about themselves.

I am reluctant to say I can give you the information when I do not think I can. What we can do is use our very best efforts to go through our material again, and where people have identified themselves to us, we will indicate that. Where they have not we will simply have to say, “Not identified,” or “Did not identify themselves as representing any particular interest,” “Speaking on their own behalf,” or whatever. That is the best I can do. If I promise you anything else, I would promise you something I cannot give you.

**Mrs Marland:** That is fair enough. As long as we get the complete list of everyone who took part, which you have—

**Ms Parrish:** In the public meetings.

**Mrs Marland:** In the public meetings. Were there any other meetings?

**Ms Parrish:** As I said, there were these informal meetings in which individuals participated and they were not public meetings. Those individuals in many cases did not want their names disclosed. They wanted to have an informal discussion and we are not disclosing their names without their permission.

**Mrs Marland:** Were those informal discussions with the minister or the staff?

**Ms Parrish:** They were informal discussions with Ms Harrington, Mr Abel and with ministry staff.

**Mrs Marland:** Okay. I think the original request was dealing in any case with the public meetings that were advertised, where people were invited to come, where you had scheduled people and unscheduled people. Certainly,



from other meetings I know people attended that I did not attend, there were recording secretaries taking extensive notes. If people said, "Look, I've been a tenant for a long time and I do have this, this and this problem," the record is there. I am simply saying, can we, as committee members, have as much information as you have as a result of the process held at the expense of the taxpayers of this province? I think that is information we are entitled to have, simply put.

**Ms Harrington:** I agree. As you mentioned, notes were taken at these meetings. I remember the note-takers who came with us, very interesting people. Their job was to try and condense what was said. It was not a tape or a transcript, it was a condensation of what was said. I remember at the very first meeting in Thunder Bay the people said, "Read us back what you've written down so that we can be assured of." It was very interesting to hear what people had said being condensed. People were very pleased with the results.

What I wanted to tell you was that those notes, that condensation, is in that buff-coloured report. The whole reason for those note-takers going with us was so that that they could put it in a report that would be public, that we could use and all members in the House could look at. I thought that was what was being done and that was the intent—

1130

**Mrs Marland:** No, I think I have made it clear now. I will not repeat it, but I think I have made it clear what we need to have and what I believe we are entitled to have, because it has been referred to a number of times as a process that led to this legislation before us today. I look forward to receiving that.

**Ms Harrington:** Is that possible?

**Ms Parrish:** As I said, we will give our very best efforts to go through. I guess what you want is, "Miss Smith, representing tenants" or "Mr Jones, representing the London area real estate association," whatever.

**Mrs Marland:** Or "Miss Smith, a tenant," or "Mr Jones, a landlord."

**Ms Parrish:** Where we have that information we have no problem giving it to you. I am just going to have to indicate that there were times when honestly we were not sure who the person represented. They did not identify themselves as having a particular affiliation.

**Mrs Marland:** But they may have identified themselves as being "a tenant" or "a property owner," but not a formal affiliation by a title name or an association.

**Ms Parrish:** They may have, and if they did we will give you that information. But, as I said, having been at meetings, it was quite common for people to simply say, "I've lived in this community for so many years," and you cannot tell whether they are a ratepayer or a landlord, tenant or rental advocate.

**Mrs Marland:** Fair enough. I understand. Thank you.  
Section 87:

**The Chair:** Questions, comments on section 87. There is an amendment, I see. I think we will do it subsection by subsection. Subsection 87(1), questions, comments?

**Ms Poole:** Several times in the proceedings we have talked about having written findings and written reasons, and I think the statement was made that this was a procedural matter and we certainly wanted to deal with that in the procedural section. Is this an appropriate section to deal with this particular matter? The Liberal Party has an amendment to 87(3), but I look at 87(1) and I wonder whether "findings" in that particular case should have the word "written" in front of it.

**Ms Parrish:** I do not think you would say you make "written findings." If you wanted to do what you want to do, you would probably say "the reasons should include findings," or that "the written reasons should include the findings." Otherwise you have a situation where, first of all, you write the findings and then you say, "Here are my findings," and then later on you write the order, and there is no connection between the findings and the order. I think that is the connection you want to make, just purely from a technician's viewpoint.

My view is that the fix you want is appropriately dealt with in 87(3), but others may feel differently. I suppose you could fix 87(1) as well.

**Ms Poole:** Legislative counsel has just suggested a way to deal with this in the Liberal amendment to 87(3), so perhaps we should just proceed and deal with it at that section.

**Mr Winninger:** I do not think it is necessary to comment other than to say that it would be inappropriate to require the rent officer to make written findings, because findings are things that are cognitive, or perceptive, or conclusive, but not necessarily reduced to paper. That is the next step, I would think.

**The Chair:** Shall subsection 87(1) carry? Carried.

Subsection 87(2), questions, comments or amendments? Shall subsection 87(2) carry? Carried.

Subsection 87(3), Ms Poole.

Ms Poole moves that subsection 87(3) of the bill be struck out and the following substituted:

"Copy to parties

"(3) The rent officer shall forthwith give a copy of an order to the parties and their agents and shall give written reasons, including the findings and an explanation of any calculations affecting the maximum rents ordered."

An explanation?

**Ms Poole:** I would just point out that on the suggestion of legislative counsel I have amended what you have before you in your books by adding the words "the findings and" after the word "including." That is how we propose to deal with this particular matter.

One change this amendment has to subsection (3) is that subsection (3) says, "The rent officer shall...give a copy of an order to the parties." Quite often the parties' agents are actually dealing with the matter, whether it be a tenant's solicitor or a landlord's consultant or solicitor, or whoever.

As the wife of a lawyer, I know that sometimes communications between clients and lawyers are not what they could be and a notice of decision is sent to the client who fails to pass it on to the lawyer or consultant actually acting



on his or her behalf. Sometimes this causes great difficulties when that professional is trying to do his or her job. I think this would assist both tenants and landlords in ensuring that all the parties, particularly the ones who have made the representations on behalf of the parties, are aware of the decisions.

We have added a second part which says, "including the findings and an explanation of any calculations affecting the maximum rents ordered," because under previous rent review orders it was extremely confusing to try to figure out exactly what this meant and why this was happening.

I think if we give an actual direction to the rent officers that we want them to explain to tenants and landlords how they arrived at their calculations if there was a change from what was requested and the written reasons for their orders, it would be extremely helpful to all parties concerned to know what this process is all about and how the conclusion was arrived at. This is particularly important as a valuable part of education of parties as to how the process works and is really necessary for them to be able to interpret these orders.

**Ms Harrington:** The ministry and the minister have looked at this and we are in agreement with the Liberal Party that there should be written reasons given. We would like to thank you for this amendment. We agree with the agents' parts as well.

My caution is with regard to "any calculations" in the last line. We would prefer your amendment to be the first two lines to read, "The rent officer shall forthwith give a copy of an order to the parties and their agents and shall give written reasons." If we get into every calculation, or "any calculation," we do not want 40-page reports. We want two- and three-page reasons.

**Ms Poole:** I am always a pragmatist and I have always believed that half a loaf was better than no loaf at all; otherwise, you tend to starve. So I would be prepared to withdraw my amendment and move a new amendment to subsection 87(3).

1140

**The Chair:** Ms Poole moves that subsection 87(3) of the bill be struck out and the following substituted:

"(3) The rent officer shall forthwith give a copy of an order to the parties and their agents and shall give written reasons."

**Ms Harrington:** Thank you, Ms Poole.

**The Chair:** Questions or comments on Ms Poole's amendment to subsection 87(3)?

**Mrs Marland:** I think you have me down, Mr Chairman. Correct?

**The Chair:** Yes. We are on a new amendment, though, Mrs Marland.

**Mrs Marland:** I just want to say that we are supportive of the intent of Ms Poole's amendment. Our very grave concern is coming up with subsection 87(4).

**The Chair:** Further questions or comments? Shall Ms Poole's amendment to subsection 87(3) carry?

Motion agreed to.

**The Chair:** Subsection 87(4): Again we have a Liberal amendment to subsection 87(4) as printed. Mrs Poole?

**Ms Poole:** The Liberals do have an amendment to subsection 87(4). Rather than reading it into the record at this time, I wondered if we should not stand it down until we deal with the Liberal amendment to section 89 concerning the appeals board. It is subsection 89.1(1). The Liberals have an amendment regarding the appeals board, which was why we wanted to amend subsection 87(4) to conform. I suggest we do not want to deal with this until such time as we have debated the substantive amendment.

**The Chair:** Ms Poole has asked for unanimous consent to stand down, I presume, subsection 87(4), as she has not made her amendment. You have not put your amendment, so you cannot stand that one down; we can stand the section down.

**Ms Harrington:** Mr Chair, the ministry would like to proceed, because we do not have any intention of changing the section substantially.

**The Chair:** In that case, Mrs Poole, would you like to place your amendment. We do not have unanimous consent.

Ms Poole moves that subsection 87(4) of the bill, as reprinted to show the amendments proposed by the minister, be amended by striking out "section 89 or 90" in the third line and substituting "this part."

An explanation?

**Ms Poole:** If members look at subsection 87(4), what it says is, "An order made by a rent officer is final, binding and not subject to review except under section 89 or 90." The Liberal caucus has proposed an amendment which would reinstate an appeals board similar to the hearings board under the RRRRA. In the event our amendment passed, this section would not be consistent, because this would make the rent officer's order final and binding, notwithstanding that we had reinstated the appeals board.

**Mr Jackson:** We will certainly be supporting it, and as I indicated earlier, as someone who was able to get a 12% rollback for my tenants in one of my buildings—and that was the only one I really did; think if I had really taken on a few more landlords. I really feel that one of the biggest frustrations that we will see two years down the road is when tenants finally have to realize that is it, it is over, there are no more opportunities. I suspect that there is the Federation of North York Tenants Associations, which has objected to this dictatorial power—I am sure that memo has not gone unnoticed by the government, or at least we will know that after we vote on this amendment.

**Ms Poole:** I would just like to point out that in my opinion—and again, I am not a lawyer, so legislative counsel might want to correct me, but my understanding is that 89.1 through 89.14 can be argued and passed without subsection 87(4) being passed, so what would result is perhaps an inconsistency in the legislation. But what I am saying is that I intend to reserve my arguments about the appeals board until we get to 89.1.

If legislative counsel is telling me that we will not have an opportunity to move 89.1 if this section fails, then we obviously would like to make arguments for the appeals board in this particular section.



**Ms Baldwin:** Perhaps I can respond. I am not saying you cannot move your other motions, but there will be a clear inconsistency in the act. If they do not correspond to one another, that would be a problem. So if you moved your motion and it passed, the committee would have to, in order to remove the inconsistency, come back and correct this provision. It is a clear inconsistency if your motion here does not pass and the other one does.

**Ms Poole:** I thank the legislative counsel. I just wanted that reassurance that I could still move 89.1 even though 87(4) might fail and that it would not be out of order.

**The Chair:** Not having read 89.1, it is difficult for me to make a presumption about whether the question would be decided here. But as you have pointed out, you are not making the substantive arguments you are going to make, and I think I would be predisposed to allow the argument to the amendment to 89.1.

**Mr Jackson:** It would be housekeeping, technically, if you go back and clean up.

**Ms Baldwin:** I would like to make one more comment. I want to make it clear that what I said was talking about what would result in the act. I was not making any comments procedurally upon what would or would not be permitted to be moved or to proceed.

**The Chair:** Just to give Ms Poole some reassurance, I can tell you that I will accept your amendment for debate, section 89.1, because I know that if I move the other way you are going to make those arguments now, which is perfectly appropriate under those circumstances. So I could give you an indication on my ruling now.

**Ms Poole:** I thank you for your usual forbearance. It is obvious you know me well.

**Ms Harrington:** So we will look forward to substantial debate and concerns and issues put forward on section 89.1, and proceed with this.

1150

**The Chair:** Shall Mrs Poole's amendment to subsection 87(4) carry?

Motion negatived.

**The Chair:** Shall 87(4) carry? Carried.

Section 87, as amended, agreed to.

Section 88:

**Ms Poole:** I was just wondering if in this section it would not be more appropriate to say "shall amend it," rather than "may amend it." We do not have a formal motion in this regard. I am just looking at it, and if there is a clerical error or omission, I think we do want the rent officer to amend it.

**Ms Parrish:** The only problem with this is that I think it would only work if you said, "If an order contains a clerical error or omission, or if the rent officer is of the opinion that it has this, then he shall amend it," because there might be a clerical error or omission that the rent officer does not know about and then you have said that he shall amend it, but he does not know about it, so he did not amend it.

The only way you could fix this to make it like the other sections would be to say, "If the rent officer comes to the opinion that," or "finds this clerical error or omission, then he shall do it." But I think just to change "shall" means that they have to change things they do not even know existed. I guess the whole problem with clerical error or omission is that it has resulted from clerical error or omission to begin with.

**Ms Poole:** Would it be acceptable to just have a friendly amendment here that would say, "If a rent officer becomes aware that an order contains a clerical error or omission, the rent officer shall amend it," or does that create more difficulties?

**Ms Parrish:** I guess I am reluctant to spend the time of the committee drafting this right now. I guess we have one other concern. My staff is saying, "Well, what if it is truly inconsequential." For example, the clerical error in the order is that Colleen Parrish is spelled with one "l" instead of two "ls". That is certainly a clerical error, but do you want people to go around reissuing orders for that?

The other thing is that if you just change that, I think you still have a problem with the part about when they do it, the timing issue: "may amend it at any time before the beginning." You would have to say, "If the rent officer finds this clerical error and it is before the appeal is launched, then he should do this." But I think there is still a good point raised by my staff that, again, some clerical errors are very minor, and nobody is being misled or disadvantaged or anything by them, so why should you go through the process of redoing it? I guess we are saying this may be a legitimate ground for retaining some discretion to decide when you should let people know that you goofed up, as opposed to continually sending out orders to people in which they have to try to figure out what the change was anyway.

**Mr Jackson:** If I may jump in, is this not simply an escape valve so that if a matter may go to court, it allows you the right to correct the document, not to change it? Well, it is changed, but to correct the document. Is it not the real purpose there in recognition that there may be clerical errors and before you go to a hearing which is being conducted on a point of law—which we will discuss at length later. I understand that process because I have been in it. Is this not more for the civil service's benefit, not for the tenant or the landlord? A clerical error that is not substantive will go unnoticed in perpetuity, but if it is a cause for an action, then that action cannot be stopped. You do not have the right to go in and fix it and then all parties back off and there is no cause for an action.

In my view, that is what the purpose is. Unless someone wants to tell me otherwise, I do not see this as being any major, mysterious thing to the benefit of the landlord or the tenant. It is basically so we do not end up in court because some secretary who has been on the job three weeks made a numeric typographic error that may be interpreted as being substantive. Therefore, that would be the point of law.

**Ms Poole:** I think the explanations of Ms Parrish and Mr Jackson are certainly adequate. The ministry does have



an amendment later on in subsection 89(1), dealing with serious errors which I think really gets to the substance of it. I will just leave the comments at that.

Section 88 agreed to.

Section 89:

**Ms Harrington:** The government has a motion of amendment to section 89.

**The Chair:** Are you speaking as printed or is there a new one?

**Ms Harrington:** A new one, yes.

**The Chair:** Ms Harrington moves that section 89 of the bill, as reprinted to show the amendments proposed by the minister, be struck out and the following substituted:

"Power to reconsider

"89(1) If, within one year of the date of an order, the chief rent officer designated by the director believes that a serious error has been made in it, the chief rent officer or his or her delegate shall reconsider the matter and may affirm, rescind, amend or replace the order.

"Idem

"(2) If a party to an application is found guilty of the offence of furnishing false or misleading information under this Act or is found guilty of fraud, perjury, forgery, uttering a forged document or false pretences under the Criminal Code (Canada) respecting the application after an order has been made on the application, the chief rent officer designated by the director, or his or her delegate, shall reconsider the matter and may affirm, amend, rescind or replace the order and subsequent orders or notices of carry-forward affected by it."

We also have two Liberal motions. Mrs Poole, do they refer to the new government amendment or the previously printed one?

**Ms Poole:** The Liberal motions refer to the original act, where the section said that the chief rent officer "may reconsider" as opposed to "shall reconsider." That has now been remedied by the government amendment, which is virtually identical to the Liberal motion, so I will withdraw subsection 89(1).

**The Chair:** Well, you have not placed it.

**Ms Poole:** Oh, I see. I will not be moving the Liberal amendment to 89(1). I am just looking at 89(2).

**Ms Harrington:** We have replaced "may" with "shall."

**Ms Poole:** Liberal amendments 89(1) and 89(2) are both taken into consideration in the government amendment, so I will not be moving the Liberal amendment to 89(2) either.

**The Chair:** We are discussing, so all members are clear, Ms Harrington's amendment to section 89.

**Mr Jackson:** So the change in the amendment to section 89 from the one I have in front of me is that she has changed "may" to "shall" in both 89(1) and 89(2).

**Ms Harrington:** Yes.

**Mr Jackson:** That is it?

**Ms Harrington:** There is also the amendment to subsection 89(2) that adds the words "perjury, forgery, uttering a forged document or false pretences" to parallel the wording of the Criminal Code of Canada.

**Ms Poole:** The government motion I have does not refer to perjury in subsection 89(2). Oh, I understand that we have two versions of the government amendment and I was looking at the new one, not the newest one.

**Interjection:** The new and improved one.

**Ms Poole:** That is right, the new and improved one. Sorry, Mr Chair. I was not looking at the 14 January version; I was looking at the new one but not as previously reprinted.

**The Chair:** Further questions or comments to Ms Harrington's amendment to section 89?

**Ms Poole:** It will probably come as no surprise to committee members that since it very closely parallels the Liberal amendment we will be happy to support this.

Motion agreed to.

**The Chair:** Before we adjourn, I point out to members that we do have officials from the Ministry of Housing coming at 2 o'clock. To expedite things, attendance at 2 o'clock would be appreciated.

The committee recessed at 1203.

## AFTERNOON SITTING

The committee resumed at 1412.

**The Chair:** The standing committee on general government will continue its consideration of Bill 121 clause by clause. I think the most expeditious way to deal with the bill at this point would be to ask for unanimous consent to stand down the sections until we get to section 116, which relates directly to rent officers. Could I have unanimous consent that we do that?

Agreed to.

Section 116:

**Mrs Marland:** Mr Chairman, as the person who first raised it, the issue is who rent officers might be after this legislation is proclaimed, what their qualifications to apply for the job might be, what their job description actually would be, and then after they are hired, what their training would be. I know you are going to want to bring forward staff, so I will wait until you do that to answer those questions.

**The Chair:** I think that would be the best way to proceed, Mrs Marland. At this point we have two people here from the ministry, Robert Glass, who is the executive director of the rent review program, and Ms Dorothy Le Fur, senior human resources adviser, to help us with these important questions. Would you come forward, please. Mr Glass, do you have a presentation for us first or do you just wish to answer the questions from the committee members as they arise?

**Mr Glass:** We have brought some material today for the committee's review, and if I might take you through it, I think that might be useful in addressing some of the questions and some of the specifics. I was asked to discuss the duties and skills of a rent officer, how they will be recruited and trained, and some questions around procedures and how they work within the organization. I have provided some materials today. These are obviously draft materials. They include a description of the rent officer position that of course cannot be finalized until the legislation is finalized, and there are other materials on organizational structure. I think it is important to see where the rent officers sit in the organization, and specifically how they relate to headquarters and the other field structures at other local offices.

If I might take you through those materials, I would like to start with the organization material. I would like to start with the organizational chart called "Rent Control Branch." It should be the second group of materials in your package.

Within the proposed rent control organization, we will have a number of regional offices, as we do now, a section on program policy, education and development, and of course the rent registry reporting to headquarters organization.

I would like to focus on the program policy, education and development organization first. It is a separate page in your package. It is probably the last page. This particular unit is very important to us because it provides overall procedural guidance to the organization, overall quality

assurance for our orders and our materials, overall public education and client services materials, and is responsible for staff training and development programs that are put in place. There are also sections that will provide management information systems and management data for us, and in particular a new section that would be added to this that would be responsible for policy, public education, training coordination and hiring of maintenance inspectors.

We have four regional offices. They essentially supervise and coordinate and provide administrative support for the local offices. There are 20 local offices. There is a chart that lays out their responsibilities, but I think I would like to focus on the local office, and there is a chart in there that expands on the responsibilities of the local office.

I said we have 20 local offices in the system now. We do not see any changes in that number at this time. Looking at the chart for local offices and moving left to right, there is a client services section. We receive about 650,000 calls each year in rent review, primarily on landlord and tenant matters. That is a current function we perform that will continue under the act.

The next section is what we would call our production team area. This is where the rent officers would be. They are supported on their teams by application analysts who do the workup of files, and by applications clerks who do the scheduling and administration around the applications themselves.

The manager of the local office is also the chief rent officer, and as you have gone through the act, this is the individual who would receive applications and assign them to various rent officers in the organization.

Also in that local office is another important position for us, which is the box at the far right called "inspection." Our rent officers will be able to draw on these specialists—and these would be full- or part-time staff, depending on the size and workload of the office—for advice on maintenance and issues related to capital. Not shown on this chart, because they work for the Attorney General, are legal specialists. Rent officers have access to these people.

In terms of the organizational structure itself, rather than seeing the rent officers as an omniscient group, I would see the rent officers as skilled individuals who are well supported throughout the organization in terms of specialist advice, staff training and development and clerical procedures that support the whole operation of a hearing.

Are there questions on the organizational chart itself? If not, I will talk about the rent officer position itself.

**Ms Poole:** It appears that your setup is very similar to the Rent Review Hearings Board under the Residential Rent Regulations Act. I am looking at the fact that they had analysts and you have application analysts who will prepare the file, which then goes to the rent officer conducting the hearing.

**Mr Glass:** That is correct.

**Ms Poole:** Was this deliberate, that you have tried to mirror it?



**Mr Glass:** It may show a lack of imagination on our part, but the Residential Tenancy Commission, rent review services itself and the hearings board have all worked in this way. They all have production teams. We call them rent review administrators and rent review assistants; they call them financial analysts and hearings officers. This is a kind of generic term, I guess, for that group, but it seems to work and that is what we would like to stay with.

**The Chair:** Do any other members have questions at this point?

**Mrs Marland:** I am wondering if Mr Glass has any global figures yet as to how many of these people in these categories at the local office we are going to have to hire to implement Bill 121.

1420

**Mr Glass:** The total number of staff in the proposed organization in front of us is within about 5% to 10% of the current numbers of staff in the combined organizations, depending on some of the decisions this committee makes around hearings, how many hearings, administrative reviews and decisions of that matter.

Most of the staff in here exist now. Many of these duties are very similar to the duties that are currently performed. For example, the secretarial-clerical positions and analyst positions are very similar to the duties that are performed now. The client services functions are almost identical to the positions that exist now. The areas of specialization, the areas that are totally new, are things like work order rent prohibition. This is a specialized group we said we would set up to handle this particular function. Inspections exist now, although some of them work for the Residential Standards Rental Board. Managers exist now in the local offices. Again, their duties change. The rent officer position I can discuss. There are some aspects that are very similar to current functions and there are some that are quite different.

**Mrs Marland:** You said within 5% or 10% of the current complement.

**Mr Glass:** That is about 560 staff right now.

**Ms Poole:** Did you say 5% to 10% above the current numbers or below?

**Mr Glass:** It would swing on either side depending on some of the decisions. We have made some estimates of the application numbers we will get. The numbers range anywhere from about 530 positions to about 590 positions, depending on how many applications we get.

**Ms Poole:** So it would be more or less in the same ballpark as what exists now from the combined boards.

**Mr Glass:** More or less. We are hoping we will get some streamlining of procedures and some reductions in total staffing.

**Ms Poole:** In other words, the standards board has been abolished and the appeals board has been abolished, yet we have the same complement of people, more or less, working in the system. Does that not seem to suggest that perhaps there is an increased level of bureaucracy?

**Mr Glass:** I do not think so. I think what is different in this act is that we are introducing the notion of hearings,

a larger number of hearings, which take longer to conduct, so it is a function of that particular feature.

**Mr Jackson:** Is it not also true, though, that the ministerial directive is that in phasing out any employees, you are to find alternative spaces within the ministry if they are reasonably qualified?

**Mr Glass:** That is right.

**Mr Jackson:** You are not under any directive as it relates to staff positions that would reduce those numbers, other than attrition. I do not wish to suggest to you that you are putting them there because you have no other place to put them, but what you have confirmed for me is what I already know. The ministry will cut budgets but not people at this time.

**Mr Glass:** It is true that the directives are to ensure that staff are retrained.

**Mr Jackson:** I have seen them.

**Mr Glass:** From our point of view, clerical staff are very easily retrained to do other clerical functions. A number of the financial and administrative positions here do things that are identical to other branches, because the financial and human resources systems are mirror images of one another from ministry to ministry. I should also discriminate between positions and staff.

**Mr Jackson:** Do you not mean "discern?"

**Mr Glass:** One would reflect an absolute limit to the number of staff we could hire. The other would reflect the actual number of staff in place. At any given time, there are probably 10 or 20 vacancies within this organization. There is no particular squeeze on staff, or there is no particular concern about layoffs or anything under this program. I think the organization could easily accommodate any changes we made.

**Ms Poole:** There have been some discussions in this committee that tenants and landlords should have the right to an automatic hearing and that then, if they reach mutual agreement, they could default to an administrative review. While the minister has not at this point in time accepted that, the ministry has indicated it is taking a second look at that particular section. What ramifications would it have for staffing if the legislation were to be amended to say that hearings would automatically be granted unless parties otherwise agreed to an administrative review? What sort of increase would you expect?

**Mr Glass:** In doing our workup of the numbers, we investigated the Residential Tenancy Commission, the hearings board and our own offices for comparative purposes. A production team such as we just talked about in rent review services, which does administrative reviews, does about 15 applications per team per month. The hearings board does six to eight, principally a function of the fact that it involves sitting down with people on one or more occasions and getting witnesses together. The Residential Tenancy Commission did between eight and 10 applications per month. I guess the bottom line is that the more hearings we hold, the larger the staffing would have to be for a given number of applications and the more expensive it would be.



There are two other problems that affect the cost of doing hearings versus administrative reviews. One is travel time and things associated with it, particularly if you are travelling to remote areas for the purpose of holding a hearing as opposed to simply looking at a file in your office. The second feature is the salary dollars associated with hearings officers versus administrative specialists; the hearings officers are paid considerably more money.

**Ms Poole:** When you estimated your targets for this particular model you got a range. What figures can you give us that you estimated for the proportion of cases that would go to hearings as opposed to administrative review?

**Mr Glass:** I believe I actually distributed that information. I am going to have to go by memory, but perhaps I could cut to the number of rent officers who would do hearings versus ones who would do administrative reviews. Would that be helpful?

**Ms Poole:** Yes. I know you did distribute a document quite a long time ago about this, so it may well be in there. Certainly at this stage if that is what you have, you could give us those figures.

**Mr Glass:** Perhaps I could come back to that. I have the information with me in my briefcase but I would have to dig it out.

**Ms Poole:** Sure.

**Mr Glass:** It depends on the kind of application. For example, we would not see a large number, a huge percentage, of hearings on tenant rebate applications, which are essentially one-to-one kinds of applications between the landlord and the tenant, but we would expect that the capital applications would almost invariably go to hearings. I think we estimate that 90% of those applications will go to hearings. There are other hearings concerning status applications under the act where we expect them to all go to hearings, and some of the predeterminations would all be hearings. Extraordinary operating costs we think would fall somewhere in between.

**Ms Poole:** It sounds like a fairly significant proportion of the cases are estimated by your office to be going to hearings as opposed to administrative review.

**Mr Glass:** If history repeats itself, initially a high percentage will go to hearings. Then, as people go through the hearings process and know what counts in terms of presenting evidence, more and more will rely on, and be satisfied with, administrative review. It will be the complex cases where there is a lot of information and a lot of fuzziness around the evidence, where the issue is not very clear, that will come to hearings. It will not be something like a water bill or a hydro bill or something that is in dispute.

**Ms Poole:** I have some questions about cost, but it is probably more appropriate for you to go on with your presentation, as you may have that factored in.

1430

**Mr Glass:** I had left off at the rent officer position. I believe you have a copy of a position specification. It is not exactly a position specification, it is a job description.

What we have in front of us is a generic rent officer position. This position encompasses the duties for doing

both administrative reviews and hearings. In point of fact, in the new organization we are likely to have specialist positions that only do administrative reviews and positions that can do both. The large offices would have the specialists in them; the smaller offices would have the positions that could do both.

The position specification in front of you is laid out in terms of the general purpose of the position, which is obviously to make determinations under the Rent Control Act and within the Statutory Powers Procedure Act, and to provide information and educate people regarding issues of landlord and tenant matters and information under the act. The duties themselves essentially lay out the responsibilities for receiving materials, analysing them, conducting hearings, discussing things with witnesses and inspecting, or referring for inspection, matters where there are some questions.

**Mrs Marland:** Mr Chairman, may I ask questions as we go along?

**The Chair:** That would be the best way to proceed.

**Mrs Marland:** Mr Glass, regarding the inspection or referring for inspection of units as deemed necessary, maybe the answer is under "Skills and Knowledge," but when you are handed material at the start of the meeting, it is hard to—

**Mr Glass:** My apologies.

**Mrs Marland:** No, that is fine. I am not criticizing; I am just saying that it is impossible to listen to you and read ahead as well.

What I am interested in is, what ability can we be assured this rent officer will have that qualifies him to do the inspections and at what point does he decide to refer for inspection?

**Mr Glass:** I guess there would have to be some judgement exercised at the hearing regarding the issue in front of the rent officer. The weight of evidence is on the people who come forward to the hearing and ask that a particular decision be made. When we get down to issues of judgement on the clarity of the material put in front of him, the rent officer would have to make a decision at that point whether he was competent to make a judgement or needed assistance in coming to a decision. I guess the easy answer is that any time they feel like calling in experts, they could.

**Mrs Marland:** We are dealing now with the rent officer position and you are saying the duties include inspecting or referring for inspection.

**Mr Glass:** Yes.

**Mrs Marland:** Before the hearing starts, I assume the rent officer will be making an inspection of a facility or unit.

**Mr Glass:** Possibly. I think it would depend on the nature of the hearing. Again, it could be a hearing regarding an extraordinary operating cost increase because of a water rate increase.

**Mrs Marland:** Which might be just paper information?

**Mr Glass:** Possibly.

**Mrs Marland:** Yes. That is not a difficult area.



**Mr Glass:** It could also be a roof. It could be very clear that a roof was put on the building. That could be very clear from the bills for the roof. The inspection, if there were one, might simply be a walk by the building to say, yes indeed, there is a new roof on this building and it is finished.

**Mrs Marland:** My concern is greater in the area where we are dealing with this very difficult word "neglect," where we have no guideline regulation or description of neglect or we do not have any examples of neglect. You are talking about this rent officer position doing inspecting, so I am asking what kind of background he will have that qualifies him to inspect and interpret neglect?

**Mr Glass:** The skills call for experience and training in these areas and if the people hired for this job do not have those skills, we would be training in that area. In terms of the skills themselves, I think we would have to admit that there are going to be limits to the skills that any one individual can have and consequently they could avail themselves of expertise if required. I am not sure a rent officer would be able to judge neglect in an elevator system, so I think he might have to go out and get an expert witness to come in and provide such information if it were required during a hearing. On the other hand, I think they should be able to identify routine things about whether work is done or not, whether bills and things seem to be appropriate or within the general kinds of expenditure levels you would expect for certain types of repairs.

Many of the people who are doing this are already in the system. Many of them have already done hearings under both the Residential Tenancy Commission and the current legislation. They have seen a lot of cases and would have considerable experience in this area.

**Mrs Marland:** Where it is necessary for the rent officer to call on a professional opinion in the broad sense of "professional"—somebody who specializes in concrete work or a mechanical functioning piece of equipment—who pays for that?

**Mr Glass:** If we called the expert witness, we would have to pay, I would imagine, but again I would hope those would be rare cases where the evidence presented to us was inconclusive.

**Mr Jackson:** Under an appeal, the onus was always on the landlord under the old system. He would say, "The following improvements are required because there's a degree of pass-through." I am oversimplifying here. The landlord would routinely pay for those inspections and they would be available to guide and assist the application.

Under this system everything is turned on its ear, though, in the sense that now it is not in the landlord's best interests to go out and get all those documented evidences of required maintenance. I use the word "experts," so-called, very loosely here; sometimes it is basically a letter. I have seen all manner of these on applications over the years. The point I am trying to stress is that under this system the responsibility for generating this now falls more on the tenant than it does on the landlord, unless the landlord is able to get a letter saying, "We really don't need these improvements, and here's my testimonial." I do

not think there will be a lot of that. I think they will be silent on the issue.

Since you have not engaged in the costing of that, to what extent have you looked at the implications of where tenants come forward and say, "We really think this should be inspected and it should be looked at and to that degree we should send somebody qualified"—using your word—"since your rent review officer is not"? Do you see where we are changing the genesis of who goes and seeks out this information.

**Mr Glass:** I do not believe the system has been completely turned on its ear. I would imagine that in presenting a case, the landlord is going to have to make the case and present the evidence. Similarly, if the tenants are making a case for neglect, there is going to have to be some evidence brought forward to indicate that there is neglect. I think where that evidence raises sufficient doubts in the mind of the rent officer, and he feels he cannot make a decision based on that evidence and the counter-evidence presented, that would be the point where he might decide to do an independent inspection or call in an independent expert. I do not see that happening an inordinate amount of the time. I could be surprised, but I do not see it happening a lot of the time at this point.

**Mr Jackson:** I will yield back to Mrs Marland. I would like to pursue that further, because I want to cite some examples, based on my understanding of this new legislation.

**Mrs Marland:** Mr Glass, my concerns revolve around the expertise of the rent officer in doing these inspections. You have actually clarified that if he does not have the expertise, that would probably be only in his opinion. I guess he is the one who is going to decide whether he has the expertise.

**Mr Glass:** That is essentially the nature of the position: sound judgement and ability to exercise that judgement based on the evidence in front of the officer.

**Mrs Marland:** It is a pretty powerful position, because in essence he is his own job review person.

**Mr Glass:** There are rehearing provisions within the act.

**Mrs Marland:** Rehearing?

**Mr Glass:** It can be opened up. People can write to the chief rent officer and ask that the thing be reconsidered.

**Mrs Marland:** Yes, but conditional on a serious error, in the opinion of the chief rent officer, I guess.

**Mr Glass:** Yes.

**Mrs Marland:** That would not be a very usual situation.

**Mr Glass:** I hope not.

1440

**Mrs Marland:** Maybe we will have to ask the minister this: What would qualify as a serious error? How would you describe a serious error if that is the wording in the bill?

**Hon Ms Gigantes:** I think one could describe it in terms of many aspects of the legislation. If an officer made



a decision that did not reflect one of the requirements in the legislation, that would constitute a serious error.

**Mrs Marland:** What about if the rent officer made a judgement based on his level of understanding of what constituted neglect without seeking another specialist's interpretation of the condition of whatever it was? If he looks at a concrete wall or floor or a steel structure or whatever and says, "Yes, I agree, it's a result of neglect," and maybe it is found later that it has not been a result of neglect, what happens? Is that a serious error, because he has not called in an expert?

**Hon Ms Gigantes:** This is such a hypothetical example that it is very difficult to know how to make an assessment of it.

**Mrs Marland:** I do not think it is very hypothetical. If you are going to say that the rent officers are going to be trained to be able to make a judgement, then it is not hypothetical. Their responsibility is going to be to make a judgement. I am simply saying that if you get an individual, which I might suggest is human nature—we all think we are pretty good at our jobs or else we do not succeed. If you do not have confidence in yourself you cannot do any kind of job. I am just saying that there may be a situation where a referral for inspection by someone who is a specialist should have taken place. Would that be a serious enough concern to the minister that it could constitute a serious error in the process of the hearing?

**Hon Ms Gigantes:** I think it might or it might not. It would depend on the case. We run into situations like this in many areas of professional judgement. It is always subject to the conditions of the particular case to decide whether an adequate judgement has been made or not.

**Mrs Marland:** I would not be so concerned if there were some course of appeal of these decisions. Any decision by an individual in the majority of government legislation has some course of appeal. Here we are dealing with the individual judgement of that one individual, and we are hearing that the only time that opinion might be reconsidered is if there were a serious error. The answers lead to support for the position I have had all along, that this rent officer is all-omnipotent.

I have been somewhat facetious, I recognize, in referring to rent officers as "wizards," but if you think of the connotation we have of a wizard, this is what the rent officer is. It is his judgement, and it is on his judgement that pivots perhaps millions of dollars either of eligible rebate to thousands of tenants or an ineligible claim by a property owner where the expenditure of millions of dollars is involved in repair or maintenance or whatever the category you want to use as an example.

Everything in this bill, section by section by section, pivots around who this rent officer is. In trying to find out what his or her qualifications are, we are finding that it is still up to that individual to decide whether or not he is a specialist. I am quite sure that if he wants to keep his job, he is going to have to prove he is competent in his judgement and that he has the ability to do the job, which means that probably he is not going to want to call in somebody

else to do an inspection very often, especially if he knows his boss is going to have to pay the bill.

**Mr Glass:** In terms of addressing the one issue, I think to a certain extent it is going to depend on the evidence that is put in front of the rent officer. If there were no evidence that a particular situation was substandard or neglectful, I do not know how a rent officer would make the determination.

In terms of the skills of the individual, their decisions are registered. They are public information and they are reviewed within the organization. There is staff training and support within the organization. There are specialists they can call on within the organization. I do not think there is an expectation that if someone got into trouble and needed legal advice, needed financial advice, needed advice on maintenance or particular issues, there would be any black mark against that individual if he called on that advice. Quite the contrary: We would expect people to avail themselves of the resources that are within the ministry and if necessary outside the ministry. In view of the amount of time and money and dollars invested in the hearing itself, I think it would be very remiss if a rent officer did not avail himself of specialists if he felt the need. I do not see it happening very often at this point, based on our experience to date, which involves a number of judgement cases as well.

**Mrs Marland:** What percentage of the people you presently have working in similar jobs under the existing legislation do you see being able to do this particular job?

**Mr Glass:** We would probably have a specialist position that did administrative reviews, which is very much like the current duties of a rent review assistant. This is where someone has chosen not to use the hearing. I think we have those people available now for all the positions that would be required under this act. Currently we have about 15 to 18 people, civil servants, who have hands-on experience in doing hearings either in our organization or seconded to the board for work with the board.

Of course our first order of business, in terms of staffing up for the organization, would be to go to the civil service, to look inside the civil service and inside our own organization. The next round of recruitment would be for people who have particular skills in this area. We have a number of board members currently existing. I would expect they would be interested in positions of this nature. We have a number of people who do other kinds of hearings under the Ontario Municipal Board and positions of that nature. I would expect they would be interested in these positions. Again, I do not think there would be a terrible problem staffing up for these positions.

**Mrs Marland:** Does the OMB currently deal with some of the—

**Mr Glass:** I am talking about doing hearings and experience with doing hearings. There are other regulatory groups and legal groups within the government.

**Mr Jackson:** You just picked the best one.

**Mr Glass:** Perhaps it was not the best one.

**Mr Jackson:** That is the blue chip one in the province.



1450

**Mrs Marland:** I did not understand why you said the OMB. Generally the OMB panel members are people with expertise in municipal affairs and planning, and that does not qualify in these areas. I am talking about the technical, physical plant, about structural things and things related to building.

I think the easiest part will be where you have figures and bills. That stuff is black and white; it is printed. People did a job and it was billed, or the hydro rates went up or municipal taxes went up. All that stuff is printed in front of them. It is the intrinsic decisions that have to be made in the abstract—I hate to use the pun—because it is concrete information, concrete evidence. There are going to be situations where the evidence is going to be based on history that is perhaps word of mouth and interpreted by somebody, or a physical, visual examination. It is the expertise of that individual I am very concerned about.

**Mr Glass:** I agree with you. I think there is going to be a wide range of hearings and there is going to be a wide range of complexity with those hearings. I would hope most of the hearings—the evidence, the material, the decisions—are going to be straightforward, but I believe we have the expertise or can recruit the expertise for the kinds of hearings that require the kinds of subtleties you are talking about, that the people who do not have the specific expertise to deal with particular bits of evidence can get that expertise if they need it.

**Mrs Marland:** What is the proposed salary range for these rent officers?

**Mr Glass:** We have not had a final classification of this position. The current rent review administrators I think range from about \$45,000 to \$66,000 per annum.

**Mrs Marland:** Actually, I am surprised. So this might be comparable, \$45,000 to \$66,000?

**Mr Glass:** It is going to fall in that range.

**Mrs Marland:** I am surprised it is that low.

**Mr Glass:** Really?

**Mrs Marland:** I am surprised it is that low for the complexity and the responsibility of this position. When you could have millions of dollars pivoting on the decision of that individual, I am surprised you could get somebody with the kinds of qualifications that I think are needed for that salary range.

**Hon Ms Gigantes:** This is an interesting complaint.

**Mrs Marland:** It is not a facetious complaint; it is a serious comment on my part. If you are going to ask somebody to have the experience and the judgement to execute the responsibility this bill gives to rent officers, then you are certainly going to have to be able to pay for that expertise. That is why I am making the comment.

**Hon Ms Gigantes:** Take it under advisement, Bob.

**Mr Glass:** We would love to. I have a human resources specialist here today.

**Hon Ms Gigantes:** We will bring it up in estimates.

**Mr Glass:** We are always arguing about salaries with them, so I trust she will take it under advisement.

**Mr Jackson:** Having been involved in watching rent review since 1975, I see some trends. One of the trends I want to raise with you, because I want to bring it back to Mrs Marland's question, is that in the renaissance period that followed Bill 51, where we were employing an inordinately large number of people because the system was expanding, we were all proud of our approach as a province to employment equity. I am quite familiar with the Hamilton office, for example, where we are very proud of the fact that a receptionist and a secretary, both because of internal applications, were able to obtain these positions as rent officers. There is a large variance between the work of a receptionist and the work of—that would concern me less as those types of individuals who have been able to get into the system more readily because of employment equity—I have seen all the administrative memos that say: "We're not dealing with the best-qualified white Anglo-Saxon Protestant male here. We're now looking at employment equity matters and internal applicants." My concern, though, is that this legislation removes a lot of the discretionary aspects and we have more decisions that are lock-step, except at some very key points. Are you following me so far?

In my view, those key points flow from information that no rent officer has the expertise to deal with. Again, that comes back to the point I raised earlier, and I think Mrs Marland is trying to get this point through as well. My fear is that we still are not going to have, even with limited discretionary rights or procedures or challenges or responsibilities for chief rent officers—I see a lot of that discretion being condensed, but in this area they can make some very serious mistakes. This is my thesis and I am very worried about this. Under the old system, it was to the landlord's advantage and best interests to bring forward documentation after documentation, which the rent officers relied on. Under this new system, it is in the tenant's best interests to articulate those concerns and to get the necessary expertise.

Invariably there is a cost associated with it, unless you do it as I did. We went through the whole building and asked, "Is there anybody in this building who is an engineer who can do this, and do it for us for free?" We mitigated a lot of our costs. A lot of tenants' organizations cannot do that. Now we come back to the point of how much money you are going to have, because the expertise is not there, regardless of what we are paying.

The other supplementary to that has to do with whether you are satisfied that your three years of employment equity have brought you to a certain level, that in fact you have achieved a comfortable level and this would be an external competition that is opened up extensively. Have you reached those levels, in your mind? I would like you to talk about that point because I certainly have been monitoring it at some of the field offices I am familiar with.

**Mr Glass:** Let me deal with the sensitive area of employment equity at this point in time. This government and the previous government set goals and a general direction in terms of the makeup of the civil service that reflected the makeup of the population. The happy news for me is that any goals or targets set for the year 2000, with the exception of the disabled and of natives—we are talking



about one or two positions in this whole organization—have been met. Mrs Marland talked about “he” doing a hearing. The odds are four out of five that it will be a “she” in our organization, as 87% of our staff are females. We have met all our targets. Consequently I am not, nor is the ministry, under any pressure to do anything but recruit the brightest and the best, if that is the question being asked.

**Mr Jackson:** No, I am not drawing a corollary between employment equity and the brightest and the best. I wanted you to confirm that almost all those appointments were internal, which is what I understood they were.

**Mr Glass:** That is correct.

**Mr Jackson:** So instead of internally within the system, you are now—

**Mr Glass:** I am sorry; the appointments to rent control?

**Mr Jackson:** Rent review officers.

**Mr Glass:** Rent review officers; the rent review administrators now?

**Mr Jackson:** The appeals board—forgive me for saying it—were all political appointments in one sense or another. They were not charged with the responsibility of the actual review.

**Mr Glass:** The internal staff who have been hired within my organization were hired through the competitive process, period.

**Mr Jackson:** I am separating between the staff and the review panel.

1500

**Mr Glass:** The next round of recruitments will be done either by retraining staff that can be retrained or most likely, at some point, via the competitive process to finish that off, and it will be the competitive process that exists within the civil service now that requires we advertise.

That requires advertisement for recruitments, standard questions asked of all applicants. The best applicant wins and the process can be reviewed and grieved.

**The Chair:** Does that complete your supplementary, Mr Jackson?

**Mr Jackson:** It does, thank you, Mr Chairman. Thank you, Mrs Marland.

**Mrs Marland:** Maybe Mr Glass wishes to continue. I think we were at inspections and referring for inspection, and you answered that question.

**The Chair:** Mrs Marland, I have two other members indicating they wish to ask a question.

**Mrs Marland:** I will wait until we get further down.

**Mr Morin:** If there were an administrative error on the part of the rent officer, would there would be a possibility for the person to go to the Ombudsman and have that error investigated?

**Mr Glass:** I would hope, under the act, that people would go to the chief rent officer and the chief rent officer would deal with it.

**Hon Ms Gigantes:** In fact, it would be a requirement before the Ombudsman's office would—as you well know, Gilles.

**Mr Morin:** Let's say he follows the procedure and goes to the chief rent officer and is still not satisfied. Could the Ombudsman investigate?

**Mr Glass:** Yes, the Ombudsman can investigate.

**Mr Morin:** So there is a right of appeal.

**Mr Glass:** Yes, and there is appeal to the courts for matters of law.

**Mr Morin:** Or administrative error?

**Mr Glass:** Yes.

**Ms Poole:** What about an error in fact, not an administrative error? My understanding is that as far as the Ombudsman is concerned, it is only with administrative errors.

**Mr Glass:** My understanding—I need some help on this—is there could be a referral to the Ombudsman under that situation if it prejudiced people, but I would presume they would go to the courts on that.

**Ms Poole:** I would like to go back to the section where you were talking about the rent officers and the qualifications, the wide range of expertise. One of the concerns I have expressed throughout this clause-by-clause is that the rent officers will all come from their particular biases, depending on what their life experiences were before they became rent officers. I think that is a given. Some people might be considered to be pro-landlord because they worked in a landlord's building for years, and some might say they are pro-tenant because they worked for a tenant advocacy organization, but they all come with particular biases of some sort. It is impossible in life not to.

As Mr Jackson pointed out, there are some very key areas in this legislation that are left to the discretion of the rent officers. What happens in the instance where you are getting different precedents from different rent officers and yet there is no right of appeal except to the Divisional Court on a matter of law? What happens in those types of instances? I can see it happening.

**Mr Glass:** I think that in the current system, the hearings board, there are precedent-setting decisions as well. There are a couple of ways of overcoming bad precedents being set within a decision. There are internal processes where people can seek advice and counsel before finalizing their decision, and there is review after the fact of precedents and decisions that were made so that a common body of policy and knowledge is developed around common types of decisions faced by rent officers.

The system anticipates that happening and the organization anticipates that happening. That is why we have built in a program standards group and quality assurance reviews, on part of it. In terms of individuals making decisions, these officers operate quite independently. They are not bound beyond the act and the regulations, but hopefully they would be guided by common sense and policies and procedures that are set in place.

**Ms Poole:** It gives me some concern when we start to use the words “hopefully they would be guided” by common sense and the procedures that have been set in place, because that is part of the problem. If they are operating independently



and if there is virtually no right of appeal, I can see instances where they come out with very different decisions. Landlords or tenants might be saying, "I'm going to try to get my case before X because...." I am not saying this as a criticism of these people. I am just saying that all people have an element of bias depending on their life experiences and what brought them to it.

Unless you are telling me that before the decision goes out, it will be reviewed by some other mechanism within your branch, I am concerned that they independently can make these decisions, which might not be governed by precedent or by the expectations of the legislation.

**Mr Glass:** In terms of assignment of cases, applications, it is the chief rent officer who would make that determination. That would discourage, I think, shopping around and looking for the rent officer one thinks is going to provide the answer one wants. In terms of review before a decision goes out, the answer is that it could be reviewed, but it is not anticipated that decisions would be reviewed before they go out unless the rent officer has requested that.

**Ms Poole:** Granted, the chief rent officer might have the prerogative of setting the schedule for which cases are assigned to whom, but there is also the very real possibility that certain rent officers will take night hearings and others will not. So people can plug themselves into a night hearing if they feel there are certain officers taking these particular cases, and they have a good chance of getting one of the ones who is favourable to their particular case.

**Mr Glass:** One of the things we have tried to be fairly direct about on this position with the staff and the organization is that they had better be prepared to do hearings that are at the convenience of the client groups, not at their own convenience. Client services are going to be a very strong thrust of this new organization. I would expect that many people will not want the inconvenience of having to leave work, to come in during the day, to travel great distances. I hope this will be a group that gets out, and I expect will get out, and will do nights and will do weekend hearings. I cannot anticipate a situation where someone would say, "I'm not doing night hearings," under this system. It just is not in the cards for this position.

**Mr Jackson:** Unless you already have it.

**Mr Glass:** We do not—

**Mr Jackson:** So this is grievable.

**Mr Glass:** The position that is being drafted will be quite flexible in terms of hours.

**Mr Jackson:** You will accept the grievances for fellow workers when they have to do all the night sittings because the single parent mom with three children who works for you and who does not do evening sittings—we are going to impose that?

**Mr Glass:** I would not want to comment. Some of our best and most flexible people are able to make arrangements, whether they are single moms or married people. That will be an understanding before they apply for the job. That is what is coming.

**Ms Poole:** Getting back to the discretionary powers, an area that has caused great discussion in this committee centres around the terms "neglect" and "inadequate maintenance." I think Mrs Marland was referring to those earlier. Part of the problem we are dealing with is that these terms are not defined in the act, nor are any criteria given. It was the position of the opposition members on this committee, both Liberals and Conservatives, that it was imperative that tenants and landlords know with what criteria they are going to be working. Late in the clause-by-clause we had some indication from the ministry that it was considering "interpretory rules," I think they were called.

**Hon Ms Gigantes:** Interpretative.

1510

**Ms Poole:** Yes, interpretative rules, which I translate into criteria for inadequate maintenance. I think they were going to consult about it and were considering it, but it was not definite. Is there any such process or set of rules that are going to apply to the term "neglect."

**Mr Glass:** In terms of regulations, we had not planned on it. In terms of guidelines, yes, we had planned on developing guidelines in this area where it is reasonable. There are many different kinds of situations we could run into, but I think in terms of the most common situations we can point people to obvious things to refer to.

**Ms Poole:** Could you share with our committee the results of—

**Mr Glass:** They are still under development.

**Ms Poole:** Have you got even a proposed draft at this particular stage?

**Mr Glass:** The material we have is indeed in a very rough state. I did not bring anything to share with the committee today if that is the—

**Ms Poole:** We are still meeting tomorrow so we would be delighted if you could send anything over.

**Mr Owens:** Unless we hit clause 130, if that is okay.

**Mr Glass:** I am sorry; I am not sure it could be brought forward quite that quickly. Most of our efforts have been in developing regulations and procedures at this point at a much different level.

**Ms Poole:** Mr Jackson just made the comment, "It certainly wasn't because our committee pushed you by getting the legislation through so quickly that you didn't have sufficient time." We have only been asking for this since—my recollection, I think, is August 1, 1991. Anyway, Mr Glass, I would very much appreciate it if you could check the status of that. If you could forward to our Chair tomorrow any information you could share with us, I am sure we would be quite delighted to have a look at it.

**Mr Glass:** Certainly. We would be pleased to.

**The Chair:** Mr Glass, do you wish to continue with your presentation?

**Mr Glass:** I think we had just referred something for inspection in the rent officer position.

Essentially the balance of duties cover concluding an application, making a determination and setting rents, and some reference to specialized rent registry applications for



determinations of error or final certification of maximum rents. There is the possibility of referring, for further inquiry and investigation, issues of apparent fraud and false and misleading information. There are a number of duties listed on page 2 explaining to parties how the act and its regulations work, and preparing issue sheets for the ministry in briefing them on sensitive issues that might have arisen during the hearings themselves.

There are a number of what I would call softer skills in conducting the hearing itself, eliciting information from people by being sensitive to very emotional issues from landlords and tenants, and basically handling a hearing in an appropriate manner listed in the act. There are a number of harder skills in using our particular software programs and technology to help them come to decisions.

**Mrs Marland:** I see you turning the page. Before you do that, the second to last one on that page says that the rent officer "provides technical guidance/assistance to analysts and clerks." What are you referring to there?

**Mr Glass:** If we look at the production teams, we are talking about those analysts and clerks, and we would probably be looking at the question of how a particular item—perhaps a particular financial item, some questions about interest—would be handled under the legislation.

**Mrs Marland:** I just wondered what you meant by "technical guidance". I knew what "assistance" meant.

**Mr Glass:** Perhaps "procedural legislative guidance" might be a better term there than "technical".

**Mrs Marland:** Based on the rent officer's knowledge of the legislation when he is dealing with these people under him.

**Mr Glass:** That is correct.

In terms of skills and knowledge, we are looking essentially for individuals who understand business finance and accounting principles, are familiar with residential property development issues and construction issues and have the tact, diplomacy and skills to hold meetings with groups of people in an emotionally charged atmosphere. Essentially, as I said, there are some harder skills and knowledge in the use of particular equipment that we hope to get, but people could be easily trained.

**Mrs Marland:** Where are you now with your training schedule? The reason I ask is that we received a package—I have forgotten when we received this now, because as I keep saying unfortunately the letter was undated, but I think it was back in December. This is interesting. I notice that I have made a note that whoever answered my question on rent officers at that point said the projection was for fewer staff on Bill 121. The other notation I have here is "106 to be hired". That probably was in response to what the impact of Bill 121 was going to be.

**Mr Glass:** As I say, there is a range of numbers there. We hope we could bring this in under the current number. I am not sure, it depends very much on the application workload.

In terms of staff training and development, I would like to go back, actually, to almost a year ago when the act was proposed. At that point we started with general orientation

of all our staff to the legislation and the process involved in the legislative debates and what they could expect. There have been more specific training programs held around the legislation since that time in different aspects of the legislation. We have set up a rather extensive committee process where staff are actually involved in developing procedures under the legislation and then their work is reviewed by other staff. It is a fairly comprehensive approach to orienting people to the details of the legislation.

In terms of training towards hearings, our first go-round on that was to familiarize people with the hearings process and with the SPPA, the Statutory Powers Procedure Act. Staff have been briefed on the requirements of the Statutory Powers Procedure Act at a series of regional meetings and they have been visiting hearings being conducted under the SPPA.

In terms of hands-on training, we have seconded three staff members so far to the hearings board. They are actually doing hearings. They have gone through an OIC appointment but they retain their status as civil servants as well. Those are changes introduced under Bill 4 and there are more OIC appointments anticipated in the next few weeks. We will continue that process as well.

**Mrs Marland:** OIC?

**Mr Glass:** Order in council appointments; sorry.

**Mrs Marland:** It is okay; we are just a world of acronyms and I thought that might have been a ministerial acronym and not one I was familiar with.

1520

**Mr Glass:** I spent a lot of yesterday going through the job description trying to eliminate acronyms in it. The training plan under the act will call for intensive training of people to do hearings. The board actually has a fairly comprehensive package to train its members now. We would be able to borrow from that and do comprehensive training under the legislation itself, but I have to stress that many of the things done under this proposed legislation are done now but in far more detail.

For instance, this act lacks the financial and economic loss provisions that are extremely complicated in the RRRA. Both acts contain extraordinary operating cost increases. Both acts have tenant rebate applications. There will be subtle differences. A lot of the basic information sought out and analysed would be the same. I stress that in terms of administrative review of applications, the process would be very similar to the process as it stands now.

**Mrs Marland:** In the package sent to me in response to my earlier questions, there were two areas I want to quickly ask you about, because it refers to rent officers. One was under the category "Procedural Training, RCA: extensions of time, directions, file review techniques, evaluating submissions, determining validity of notices of rent increase, complete applications, file management, workload assessment." Are all those areas fairly routine? In file review techniques, is that something they will learn to expedite their ability to skim over the stuff that should not take as much time? Is that what that means?

**Mr Glass:** A lot of this is the administration of the process itself and time-line requirements under the act. We



have similar kinds of requirements now, but they need to be reviewed vis-à-vis this legislation.

**Mrs Marland:** One I did think was kind of—it is not really humorous, because I have experienced a situation where it was very serious. In the conduct of hearings you even have crowd control.

**Mr Glass:** Something we hope will not happen, but it has.

**Mrs Marland:** In a physical sense.

**Mr Glass:** There are a number of techniques of how a hearing is orchestrated, how the meeting rooms are set up, when to exercise control, when people are allowed to continue on. People need to be briefed before they get into them.

**Mrs Marland:** The final one is “regulations training.” If we go back into the House on March 23, and I am sure this will be expedited through the House to proclamation as early as possible, then you are going to draft the regulations. You do not have the regulations now, do you?

**Mr Glass:** In some cases we have been working with very drafty material.

**Mr Jackson:** By definition that means it has holes in it, you know that.

**Mr Glass:** It means it has not been signed off on, and unfortunately, again, we are orienting people to this act despite the fact that the committee has not finalized its decisions and it has not gone through committee of the whole. Nevertheless, we have had to prepare people in anticipation that many of the things would remain the same.

**Mrs Marland:** With a majority of government members on the committee, they will.

**Mr Glass:** We never say that. In point of fact committees and governments have changed their minds on specific pieces of legislation. We have been working with the best materials we have at hand and it has been running in parallel with these sessions. We have been running as far ahead as we can. For instance, training on the SPPA: We have a good body of knowledge in terms of conducting hearings. We can train people in that area with confidence that either we are going to have hearings or we are not. We likely will have hearings, so that training is not wasted. That can be done.

Training on procedures: There are certain procedures we exercise now around file management, rent determination and base rent validation. All that can be done now.

**Mrs Marland:** All that stuff is very routine, but when I saw “regulations training” I thought, “How can you do that?” because you do not have the regs yet.

**Mr Glass:** We have material but we do not have the regs; you are correct.

**Mrs Marland:** Mr Glass and Ms Le Fur, if you are the two people responsible for the hiring of these wizards, I wish that you do a superb job. It is going to be terribly important to the tenants and the property owners in this province, because the amount of power that is placed in the rent officers’ area of responsibility is tremendous. It is a very powerful position with a lot of judgement resting on

their shoulders. In fairness, whether you are for Bill 121 or opposed, the fact is that it is going to become law in this province and the rent officer is going to be the person around whose head this law pivots and revolves. I wish you lots of success in your hiring and training and look to your doing a superb job on behalf of the people of this province in your area of responsibility. Thank you for your answers this afternoon.

**Mr Winner:** From all the Munchkins, I echo Mrs Marland’s thank you for coming today.

**Mr Glass:** It was a terrible moment when we introduced Ms Le Fur as Dorothy because of the references to the wizard.

**Mrs Marland:** It is all right. I have an amendment coming up that suggests that wherever “rent officer” is referred to in the bill we place an amendment referring to “the wizard.”

**Hon Ms Gigantes:** You are talking to the chief wizard. Section 116 agreed to.

**Mrs Marland:** Will Mr Glass be the chief rent officer? Is that what you mean?

**Hon Ms Gigantes:** No, but he is responsible for the whole lot.

**Mrs Marland:** Yes, that is what I meant.

**The Chair:** We just carried section 116.

**Hon Ms Gigantes:** Thank you very much.

**The Chair:** Where did Ms Poole go?

**Clerk of the Committee:** She is outside having a coffee. Would you like me to get her?

**The Chair:** Yes. Mr Glass, do not go far. You may be required.

**Mr Glass:** I am not going far. I was going to go back to my briefcase and look for the numbers I was asked for.

**Mrs Marland:** We just passed section 116?

**Hon Ms Gigantes:** Yes.

**The Chair:** I think now we should return to Ms Poole’s amendment to subsection 78(5).

**Mrs Marland:** Pardon me, subsection 78(5)? Did you already vote on subsection 78(4)?

**The Chair:** Yes.

**Mrs Marland:** You have already voted on subsection 87(4)?

**The Chair:** All of section 78 has been dealt with, with the exception of subsection 78(5).

**Clerk of the Committee:** She is talking about 87(4).

**The Chair:** Oh, 87? I am sorry, Mrs Marland.

**Mrs Marland:** I am sorry. I was asking about 87(4), which is where we were at noon. We have not voted on that yet, have we?

**The Chair:** Yes, we have.

**Mrs Marland:** Okay.

Section 78:

**The Chair:** Ms Poole moves that subsection 78(5) of the bill be amended by striking out “by telephone or otherwise” at the end.



1530

**Ms Poole:** Mr Chair, might I ask if there is somebody from the Ministry of Housing who could answer questions relating to telephone evidence as covered in the Rent Control Act?

**Ms Parrish:** I have responded on some of these issues, but Ms Poole has not been satisfied with my answers. I mentioned this issue to Mr Glass and he inquired of his staff as to their experience under previous statutes. I think he can tell you something although, as you know, Mr Glass is not a member of the hearings board.

**Mr Glass:** I was asked to review some of our experiences as quickly as possible today. I only had a few minutes to check with a number of people who had done hearings under the Residential Tenancy Commission and with some associates at the board. Indeed, there is a history of getting evidence over the phone. This particular provision in the act has been placed there to save time and money, particularly in areas like the north where there could be great distances to travel.

The usual procedure would be a conference call—this would be a small hearing—where other parties could address the individual on the other end of the line. It is usually fairly specific information they are looking at. The procedures require that parties be able to hear and understand the person while he was speaking and be able to question that person. I think in terms of a conference call situation as opposed to someone with a telephone at his ear relaying information from that conversation to other members of the party. That is essentially what is anticipated.

The person I dealt with said there had been a number of instances in the north where weather had prevented people from getting to the hearing and that short of rescheduling the whole thing and bringing people in again, it was much more convenient to get the evidence over the telephone. That is essentially what that is there for.

**Ms Poole:** Mr Glass, one of the concerns I expressed on the record this morning was that I had talked to both a current hearings board member and a former one. Mind you, they were both from southern Ontario locations, but they indicated that in their experience, which was quite considerable, this provision had not been used. They were extremely reluctant to even entertain affidavits because of the fact that there was no opportunity for cross-examination. Telephone evidence was certainly not something they would entertain.

We are talking about telephone evidence of a witness to the proceeding and about an adversarial condition. We are not talking about where the appeals analyst, who is the person who assists in preparing the file, makes telephone calls to ascertain factual information such as: "Is this your suite number? Is this the correct address? This is the type of information you must bring with you," and that the file is factually correct prior to its going to the hearings board member.

**Mr Glass:** The situations I discussed were actually in the north. I would not anticipate something like this in a central location. The situation I was particularly referring to was routine questions on evidence that was in front of

the parties at the time and it was an interpretative issue. I believe it was a bill and some questions about that bill. We expect that this will be used very sparingly and in situations where it was more a matter of clarification than a matter of dispute. I take your point very well, that indeed if this was a hostile witness or a questionable witness or something like that, you would not want to do that over the telephone. In fact, I might be quite appalled if someone did.

**Ms Poole:** Thank you for that, because one of the concerns I had from the discussion yesterday was that it was going to be used in a far more widespread manner. I think there was a reference made to a little old lady who did not want to go out at night or people who had to work during the day, that type of thing, where it was basically for the convenience of the witnesses. But we had grave concerns. Certainly the members of the opposition did. You can tell by the massive attendance here that—using the royal "we"—we are very concerned about it.

**Mr Glass:** I am sure you are carrying it for all.

**Ms Poole:** One of the concerns was on the issue of identification. I can certainly understand if it is a witness interpreting a section of the bill, if it is a professional matter. What I am more concerned about are situations landlords and tenants quite often fall into, where it is an area of controversy, where it is adversarial and the use of the telephone with witnesses could, I think, be massively abused.

One I started to mention was identification. How do you prove it is the person you say it is? You phone them at a certain number, but with call-forwarding abilities these days it could be problematic. The second is credibility. When they are not there face to face it is extremely difficult to gauge the credibility. You cannot see facial expressions or body language. You cannot see whether certain questions are making them extremely nervous. The third issue is that the accused should have the right to have his accuser face him when giving the evidence.

These are the types of things that made us very concerned. But my concern is that as it is expressed in subsections 78(2) and 78(5), there are no restrictions on the use of telephone evidence. I contacted various other appeals boards, boards and tribunals. I think I had a list of nine I read into the record this morning. I contacted solicitors who acted extensively with these boards. They said it was unheard of to accept telephone evidence, that the only time it was done when it was teleconferencing, I think they called it, between counsel. The lawyers involved would do it, but because of these other issues it was very firmly discouraged.

Could you tell me if there are going to be regulations put in place to offer not only guidance but actual instruction as to the use of telephone evidence?

**Mr Glass:** I do not believe we had anticipated detailed regulations under this section. We had not anticipated using it in that manner. We share the concerns you have expressed. What we had seen was the opportunity for different parties to question certain witnesses over the telephone where it would be a matter of routine information, a recognized



official or where something not in dispute but where we were receiving clarification.

**Ms Poole:** I certainly would have no objection to that if you had a structural engineer whose report was unclear about a point or something. Certainly that would be very convenient.

**Mr Glass:** I am thinking even more basically, like calling the city and saying, "Is this the tax bill and is this the period it covers," and things like that. There would be no question that the official was who he said he was and that it was a matter of seeking clarification rather than disputing something.

**Ms Poole:** I do not know what to suggest. In its current form there is no other section in this act that gives me as grave concern for the possibility of abuse as this one, particularly if it was at the sole discretion of the rent officer whether telephone evidence was allowed. Nowhere did I even see that it is at the consent of both parties. Both parties are to be present to hear the evidence, but in my way of viewing it, I did not see any requirement for consent, I did not see anything that would require identification. I did not see anything that would give us protection that it would only be used in fairly rare circumstances or circumstances when it is just technical evidence that was not in dispute and certainly just for matters of clarification.

**Mr Glass:** It has been our expectation that people trained to conduct hearings under the Statutory Powers Procedure Act would exercise good judgement within the guidelines of that act. It strikes me that dealing with a hostile witness or a questionable witness over a telephone would not be the procedure under that act and therefore it would not be done. I am not sure what other safeguards would be proposed.

**Hon Ms Gigantes:** I think it is important for us to again remind Ms Poole that these are not telephone conversations simply covered by this legislation; these are telephone conversations in the case of a review that will involve the application of the Statutory Powers Procedure Act. It might be helpful on this point to have Colleen Parrish remind us what that would involve in terms of the process that would be followed.

1540

**Ms Parrish:** I reviewed what I said yesterday in Hansard. I talked about how there is always a preference for oral or viva voce evidence. That is because of a series of laws that are not statutorily based but are based essentially in case law that deals with evidence. There are a whole series of rules that are called "best evidence" rules that set out what the courts have said over, to be blunt, centuries of interpreting when it is appropriate to use substituted evidence. Before the days when they had telephones, they had things like commissioner evidence and so on, where people were in other countries or were on their death beds or whatever.

You are quite right when you talk about credibility. Credibility is an issue that usually must be judged by the demeanour and so on of an individual, as well as what he says. So there are a series of rules that people have to apply and think about when looking at evidence. This sec-

tion simply says that you "may"—not you "shall"—interview or question by telephone. That questioning could be a routine matter. I think Bob's example is one of the best. You phone the city of Hearst and have the tax officer of Hearst identify this bill as being the bill of the city of Hearst, and matters of that nature.

I think certainly if parties say, "This is an issue of credibility so I wish to have the opportunity to have live cross-examination of so-and-so," then that person would be required to attend. If he did not attend, then that evidence would not be brought forward. This is a permissive rule that still has to live within all the other rules of natural justice, what is in the Statutory Powers Procedure Act and all these evidentiary rules that have evolved over the century.

There are situations, I would add, where the parties agree to do something by telephone, and also teleconferencing by counsel. My staff spoke with Susan Gillespie who is the vice-chair of the hearings board. She confirmed that they do quite commonly have teleconferences involving counsel. Except in the north, they use this largely for procedural issues, to decide when their experts can come and so on. But at some level, they are still adducing evidence: Their evidence is their expert is not available next Tuesday. That is not very important evidence, but it is still evidence.

I am sorry this is a very complicated answer, but I guess I am just saying that I think there are safeguards within the system. We have the ability to have procedural regulations as well under this statute. I suppose if there was a very big concern about this area we could also look at that.

**Hon Ms Gigantes:** Given that we are providing a permissive avenue here for the process, I would hate to rule out the possibility that in very rare cases a person who very much wished to take part in the hearing and physically found it very difficult to do so might be involved on the telephone. Without getting into a long discussion on what is a very interesting subject, we are changing what we have come to accept as a means of providing testimony. We do it in many areas. We are experimenting now. Certainly I feel it is a door that is worth opening to provide the possibility for a witness to participate who physically finds it difficult to take part in the process under this bill. To be able to use the telephone is a step forward. I would hate to define that so narrowly to questions like counsel ascertaining this or that, or checking with a tax department, that we would close that door. That is my personal feeling about it.

**Ms Poole:** Certainly I do not think it is a question of closing doors; I think it is a matter of opening windows to abuse. That is what I am talking about. I do not think the situations Mr Glass describes are problematic. What to me is problematic is that I get the impression, both from the few comments made yesterday and from what you just said, that you feel it is not only a matter of providing technical evidence; you also feel it is a matter of accessibility.

**Hon Ms Gigantes:** Yes, I do. I find the likelihood rare of an officer finding that acceptable. I think it would be a rare case. I think we have to begin to frame our processes under the law so that the rare cases can be part of the



process of the law. This is one avenue for doing that. I can certainly imagine it would be well contested if a rent officer decided in a highly contentious and argumentative case to bring forward a telephone input to a hearing that could be challenged on the basis of whether that was actually the correct person on the other end of the line. This is the kind of thing no rent officer is going to want to get into if it is going to create the kinds of problems you are suggesting. I think there are occasions when it would be quite suitable for a rent officer to exercise discretion to permit people who would not otherwise be able to join the process, to join the process.

**Ms Poole:** But it comes back to the fact that neither this legislation, nor any regulations of which we are aware, nor the Statutory Powers Procedure Act says that this is to be used in rare instances. The example given yesterday afternoon was trying to obtain evidence from very elderly people, persons with disabilities, people with young children, people you are forcing to come out of their homes. I know it is difficult sometimes, particularly if you have evening hearings, to accommodate a group of tenants, for instance, who might find it difficult to come out in the day. But then you have a contrary problem that you then are forcing seniors to come out at night. Many seniors do not like to travel at night.

If you start having a policy where for people's convenience you say that you can take telephone evidence, that is where I think you will open the window to abuse. A senior citizen or little old lady may be sitting in her apartment with an agent from the landlord beside her who is very helpful to Mrs Smith in nodding or shaking his head because Mrs Smith is confused by what exactly is happening. It may not be a dramatic coercion, but it could be something subtle like that. It could be somebody being deliberately fraudulent, but I can think of incidences where it is a subtle form of coercion. There is no ability to discern whether that individual is making his testimony freely or is being coached, is being directed, is reading from a script, is being gently nudged or whatever. That is the concern I have. As long as it is in the current form, without restriction, that concern remains.

1550

After hearing Mr Glass's supposition, which is that on technical points or where there are great distances to be traversed or unusual situations where it would be used, if there were some guidelines just to ensure that there were safeguards, then I would consider even that to be a reasonable compromise. But I do not think you should just blanket say: "The legislation should stay as it is. There is no intention to have regulations. Hopefully everything will work out, because we do not think it is a problem." The lawyers I talked to did not feel that way. They felt it was quite open to abuse.

**Hon Ms Gigantes:** Yes, I am sure you could get that reading.

**Mr Winninger:** Did you speak to them on the telephone?

**Ms Poole:** Yes, but do you know the difference? The difference is that I had to phone them two or three times to

get hold of them, and I recognized their voices. There was some past history since they are close personal friends. I also talked to them about things like leadership campaigns. I put them through skill-testing questions to make sure they were who they said they were. They had all the right answers.

**Mr Winninger:** I do not really share Ms Poole's overweening concern with the present form of subsection 78(2) or 78(5). I am glad Mr Glass is here to help us through this issue. Ms Poole indicates that there is an absolute right to confront witnesses in Canadian courts. That is just not true. I found out the hard way. I shared a case with Ms Poole in the Court of Appeal, where I argued precisely that. The Court of Appeal for Ontario disagreed, not only with me but also with Brian Greenspan who happened to be there the same day arguing exactly the same charter right. It is quite clear, at least in Ontario law, that there is no absolute right to confront a witness.

I think Mr Glass has made some very appropriate comments in regard to how that section might work in practice. Let's say, for example, there is a non-controversial procedural point that comes up. I do not think Ms Poole would disagree that the telephone would be an appropriate way to obviate the necessity of a witness appearing who is physically incapable of coming, is geographically inaccessible or who has a job and is supporting five children, a member of the working poor who cannot afford to give up that time. But there are other cases that may arise, as the minister indicated, where someone who is confined to bed, for example, might not be able to attend, but might be able to give evidence over the telephone.

Mr Glass, in a situation where the rent officer has recourse to this system of adducing evidence, there might be a speaker phone, for example, so that both parties and their counsel could hear what goes on.

**Mr Glass:** I expect that there would be a speaker phone because I think it is important that the other parties hear what is being said at the time. Our first recourse in a situation where there is an invalid or a senior citizen who can not get out is to take the hearing to him. I think we talked a little bit about the necessity for that. But failing that, we see the telephone as a possible convenience. Again, I suggest it would be something like you are describing: a speaker phone situation where parties hear and can discuss things with one another.

**Mr Winninger:** We might have an engineer or other expert in Ottawa and the cost of bringing that expert down to London would be so prohibitive that the parties may agree that the expert should be heard by phone. But if these parties and their counsel who are listening to what is being said on the speaker phone have questions, there is no reason, given modern technology, those people could not participate in the conversation and ask questions if they wanted to.

**Mr Glass:** None whatsoever. We have conference calls. It is just a regular part of doing business. People can talk to one another and exchange opinions and usually material can be faxed back and forth so they are looking at hard copy material while this discussion is going on.



**Mr Winninger:** Modern technology.

**Mr Glass:** It greatly facilitates thing.

**Mr Winninger:** Let's say a party or counsel for a party decides, "This person who's speaking at the other end of the phone is under coercion," or: "I think his or her credibility is such that I want that witness to be summoned to the hearing. This telephone method is just not good enough to test this person's veracity." There is no reason why a party or counsel could not request that person be summoned, type up a summons and give it to the rent officer to issue.

**Mr Glass:** None whatsoever. The hearing could be reconvened at a later date.

**Mr Winninger:** These are some of the procedural and evidentiary safeguards you were referring to earlier that should put Ms Poole and her stable of lawyers at peace with this section. Would you not think that?

**Ms Poole:** Stable? I guess it is better than "harem of lawyers."

**Mr Winninger:** It is better than unstable.

**Ms Poole:** Is Mr Winninger saying they are all horses' asses?

**Mr Winninger:** Some of these concerns about coercion or about credibility problems are things that could be addressed by bringing the witness in if absolutely necessary and if the telephone method proved unsatisfactory to either party.

**Mr Glass:** Of course.

**Mr Winninger:** I have one final point. The rent officer has a considerable degree of discretion as to other tribunals, and there is the Statutory Powers Procedure Act.

**Mr Glass:** Correct.

**Mr Winninger:** If the hearing was conducted unfairly or not in accordance with natural justice, these are likely to be the kinds of grounds for appeal on an error in law or jurisdiction that would find their way to the Divisional Court in any event.

**Mr Glass:** That would be my understanding.

**Mr Winninger:** If the safeguards are not met or complied with by the rent officer at the hearing, it is likely this would be grounds for appeal on a question of law or jurisdiction, and therefore there are further safeguards in the appellate direction.

**Mr Glass:** I would hope that our internal systems would catch things like that long before they became a matter of the law.

**Ms Poole:** I would like to address several of the points Mr Winninger raised. The first is his last point about the right to appeal to Divisional Court. I have a document from the chairperson of the Rent Review Hearings Board, Dr Ratna Ray. Although I believe Dr Ray may not be the chairperson at this given moment, she was at the time this letter was written.

They have said: "While the costs to the parties of appealing to the Divisional Court vary, it is clear that all but the very experienced and able sole landlord and sole tenant appellants will have to hire lawyers. The cost to tenants of

an appeal may run in the neighbourhood of \$10,000 for a simple one-issue appeal, but an unsuccessful appeal would leave them open to assessment of the costs of the landlord, thus doubling this figure. Landlords' costs run considerably higher, in multiples of \$10,000, but this does not paint the entire picture of the appeal situation."

First, the odds of somebody appealing telephone evidence because of the Statutory Powers Procedure Act, on a matter of law, I think would be highly unlikely given the prohibitive costs involved. Second, although there seems to be agreement on the type of so-called "rare instances" when it might be appropriate to use telephone evidence, I still do not see that there is a safeguard that limits the discretion of the rent officer in making those decisions. If a rent officer in a particular scenario thinks, because a person does not want to come out at night or cannot find a babysitter, that he can accept telephone evidence, even though one's compassion might say there is a compelling argument to allow the telephone evidence, on the laws of natural justice and the risks involved I would say those cases should not be numbered among the rare instances.

1600

I do not see anything restricting those types of instances or any other for that matter. Common sense, as Mr Glass earlier indicated, might be very helpful, but I am not all that optimistic that every single rent officer is going to use discretion wisely, is going to have common sense and is not going to have a particular bias in these areas, particularly if policy directions constantly come from the ministry saying: "We want accessibility. We want to open up the process. We want to open up doors." The interpretation of that might vary from rent officer to rent officer.

The question I have for you, Mr Glass, and you may not be able to answer this because it may eventually become a political question, is, would you consider putting in regulations and guidelines as to the use of telephone evidence?

**Mr Glass:** Given the way it was anticipated this section of the act would be used, I would not have seen the necessity for it. If the committee were convinced there was going to be this much indiscretion within the rent control system, certainly guidelines could be entertained by the committee. I hope that if we introduce guidelines they will not restrict certain situations that might be crying out for some flexibility. That is my experience with moving in with guidelines, and more particularly, with regulations that in trying to make sure situations are not handled indiscreetly or in a cavalier fashion, we cut off the capacity of people to use good judgement and exercise flexibility where it is called for. I am not sure I have answered your question.

**Ms Poole:** Yes, you have, and you have answered it very well. I certainly concur with you that among these guidelines there would be an extenuating circumstances provision that would allow for things not in the guidelines but things that cry out for remedy, as you just said. I have no problem with that. What the guidelines would do is ensure that the rent officers are really having telephone evidence for the purpose for which it was originally conceived

and have not gone off on a tangent because of their own particular biases.

There are five members of two opposition parties on this committee who for the last six months have been talking extensively about the amount of discretion that is allowed rent officers, and we are very concerned about it. Whether the entire committee feels that way or not, there are certainly a number of us who do.

**The Chair:** Shall Mrs Poole's amendment to subsection 78(5) carry? All in favour of Ms Poole's amendment? All opposed?

Motion negated.

**The Chair:** Shall subsection 78(5) carry? All those in favour?

**Hon Ms Gigantes:** You are in favour. Come on.

**The Chair:** All in favour?

**Hon Ms Gigantes:** Yes, they are all in favour.

**The Chair:** Raise your hands. Opposed?

**Ms Poole:** Mr Chair, there seems to be a strange reluctance by the government to vote for this section.

**The Chair:** Carried.

**Hon Ms Gigantes:** I am going to call them on the telephone.

Section 78 agreed to.

Section 89, as amended, agreed to.

**The Chair:** Section 89.1 is a Liberal amendment. Ms Poole, would you read your amendment?

**Ms Poole:** I would prefer not to read this into the record, but I have no choice but to do so since it is the only way I can get this amendment on the table. Mr Chair, might I ask that Mr Morin read this into the record on my behalf? I am not sure I could last through four pages.

**Mr Morin:** Ms Poole moves sections 89.1 to 89.14 as follows:

I move that the bill be amended by adding the following sections:

"Appeal from order

"89.1 (1) Any person affected by an order under this act of a rent officer or the director may, within 30 days of the giving of the order, appeal the order by filing a notice of appeal in the prescribed form with the board, together with any documents that the party appealing relies upon in support of the appeal and which were not filed on the application.

"Record

"(2) Where a notice of appeal is filed with the board, a copy of the notice shall be given by the board to the director who shall thereupon forward to the board,

"(a) the original or a true copy of the application;

"(b) the original or a true copy of all documents and material filed in respect of the application; and

"(c) a certified copy of the order appealed from together with a summary of reasons for the order.

"Filing of documents, etc, by respondent

"(3) Where any person has filed a notice of appeal, the other parties to the appeal shall, within 30 days of the filing of the notice of appeal, file with the board the docu-

ments that the parties intend to rely upon at the hearing of the appeal and which were not filed on the application.

"Notice to parties

"(4) After receiving a notice of appeal, the board shall give a notice to the parties stating the date, place and time when the appeal will be heard.

"Issues may be heard together

"(5) Where several different appeals have been made to the board, and the board is of the opinion that it would be appropriate to determine the issues raised by the appeals together, the board may hear and determine the issues in dispute at a common hearing.

Issues may be heard separately

"(6) Where the board is of the opinion that it would be appropriate to deal with some of the issues raised by an appeal at separate hearings, the board may direct that some of the issues be dealt with separately and may set additional hearing dates for the determination of those issues.

"Issues on appeal limited

"89.2 (1) On the hearing of an appeal, the issues will be limited to those raised in the initial application unless the board otherwise allows.

"Agreement to further limit issues

"(2) Where all the parties to an appeal agree in writing, the board may further limit the issues of the appeal to those issues agreed upon by the parties.

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"Evidence

"(3) On the hearing of the appeal, the board shall hear any evidence that is relevant to the issues, whether or not the evidence was tendered or was available on the initial application.

"Burden of proof

"(4) On the hearing of the appeal, the burden of proof lies on the party who made the initial application.

"Hearing by single member

"89.3 An appeal shall be heard by a single member of the board.

"Procedure

"89.4(1) The Statutory Powers Procedure Act applies to proceedings by the board in the exercise of a statutory power of decision.

"Deemed compliance

"(2) The giving to a party of a copy of a notice of appeal to the board shall be deemed to be compliance with section 8 of the Statutory Powers Procedure Act.

"Procedure

"89.5(1) Subject to the Statutory Powers Procedure Act, and except as otherwise provided for by this act, the board may determine its own procedure for the conduct of hearings.

"Policy guidelines, etc, available to public

"(2) All policy guidelines or rules of procedure made by the board under subsection (1) for the conduct of hearings shall be made available for examination by the public.

"Matters board to consider

"89.6(1) In addition to any material, evidence or information submitted to the board on an appeal, in hearing any appeal, the board may consider,



"(a) any matter the rent officer or director, as the case may be, was entitled to consider on the application;

"(b) any material and documents submitted on the application; and

"(c) such other matters as it deems necessary or advisable for the purpose of dealing with the appeal.

"Board may investigate, etc

"(2) The board, in respect of any appeal, may conduct any enquiry or inspection of documents or premises that the board considers necessary.

"Additional material

"89.7(1) The board may direct any party to the appeal to file such additional material as the board considers necessary and the other parties shall have an opportunity to examine the additional material and to explain or refute it.

"Where additional material not filed

"(2) Where any party to the appeal fails to comply with a direction of the board under subsection (1), the board may,

"(a) in the case of the appellant, refuse to make an order allowing the appeal or that part of the appeal relating to the failure to comply with the direction; and

"(b) in the case of any other party to the appeal, refuse to take into account any representations made in respect of the matter regarding which there was a failure to comply with the direction.

"Board may question parties, etc

"89.8 At the hearing, the board may question the parties who are in attendance and any witnesses with a view to determining the truth concerning the matters in dispute.

"Other relevant information

"89.9 In making its determination, the board may consider any relevant information obtained by the board in addition to the evidence given at the hearing, provided that it first informs the parties of the additional information and gives them an opportunity to explain or refute it.

"Order of board

"89.10 Upon completion of a hearing, the board shall by order,

"(a) affirm the order of the minister;

"(b) vary the order of the minister; or

"(c) substitute its own order for the order of the minister,

"and shall forthwith give a copy of the order to the parties to the appeal, together with reasons in writing for the order.

"Power to rehear

"89.11 Where, within one year of the date of an order of the board, the member of the board who made the order is of the opinion that a serious error has been made, the member may, on the member's own motion, rehear any appeal and may affirm, rescind, amend or replace the order.

"Order of member deemed order of board

"89.12 An order of a board member shall be deemed to be an order of the board.

"Board to adopt expeditious procedures

"89.13 The board shall adopt the most expeditious method of determining the questions arising in any proceeding that afford to all persons affected by the proceedings

an adequate opportunity to know the issues and be heard on the matter.

"Decisions to be on merits

"89.14(1) Every decision of the board shall be upon the real merits and justice of the case.

"Real substance

"(2) In determining the real merits and justice of the case, the board shall ascertain the real substance of all transactions and activities relating to the residential complex and the good faith of the participants and in doing so,

"(a) may disregard the outward form of the transaction or the separate corporate existence of the participants; and

"(b) may have regard to the pattern of activities relating to the residential complex."

**The Chair:** Thank you, Mr Morin. If Ms Poole thinks this is not self-explanatory, she may offer an explanation.

**Hon Ms Gigantes:** It is certainly self-explanatory why we do not want to do it.

**Ms Poole:** Thank you, Mr Chair, and thank you very much Monsieur Morin. I appreciate your assistance because, as I say, I am not sure I could have got through reading all four pages. I hope my voice does not give out while we are discussing this.

This is, I would say, one of the most crucial Liberal amendments. We feel very strongly about the right to appeal, and this is one of the few areas in which tenants and landlords have concurrence. In fact, all parties other than the Ministry of Housing and the NDP government seem to be unanimous in their desire to see an independent arm's-length appeal board re-established under this legislation.

I find it personally very sad that, in its desire to dissociate itself as much as possible from the RRRRA, this government has abolished two of its best features: first, the standards board, and second, the appeals board.

In December, Dr Ratna Ray, chairperson of the Rent Review Hearings Board, sent a document to all members of the Legislative Assembly. It was a report, prepared by Dr Ray, expressing the concerns regarding the lack of appeal process in the proposed Rent Control Act. It was signed, I think, by virtually every member of the hearing board and it solidified extremely well the arguments for retaining an independent arm's-length appeal board.

I am going to give you a number of the points they have made plus a summary of their recommendations. The first item they go into in this brief is to discuss how the possibility of a hearing at first instance appears to answer the shortfalls of the current system of administrative review. They say this is very good, because direct access to the decision-maker allows the clarification of issues at the time submissions are made. Also, many parties are able to express themselves much better orally than they are in written form. They have also mentioned that a hearing can be used as public education and for sharing of information.

However, while having a hearing process at the initial level would solve some of the problems encountered under the RRRRA, on the other hand, serious new problems would arise when the appeal from an initial level application is only available to the Divisional Court, and even then only under exceptional circumstances.



The first item they go into when they talk about the appeal and the desire to have an appeal board is the doctrine of separation of powers, the fact that what we need is an independent arm's-length appeals board that would operate independently of perceived or real political influence, and should also be free not only of influence from the ministerial or political side but also from the bureaucratic side. They say, and I will quote:

"The most serious shortfall of the proposed system is the public perception that there is no independent decision-making body which is free from having its discretion fettered in reaching its determinations.

"When the decision-makers are subject to the control and discretion of the minister, there is no public perception of separation of the judicial process from the political process."

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I think that is very true. They have talked about how prohibitive the costs are when you say there can only be appeals to the courts. Earlier, when I was responding to Mr Winninger's point, I talked about the cost of taking a case to Divisional Court and that was in a simple appeal on only one issue. If you are going with the complex case, then obviously it has been absolutely put beyond the realm of almost all tenants and almost all small landlords and probably some larger landlords.

One fact they pointed out in their brief was that under the current system landlord appeals to the Divisional Court have outnumbered tenant appeals in a ratio of over five to one. This is clearly a statement of the accessibility and affordability of this avenue of appeal, or I should say lack thereof—and those are my words—which incidentally takes place after one independent appeal hearing to the board. We are talking about a situation that exists right now where there are appeals to the courts, and they have already had an opportunity to appeal, and tenant appeals are far outweighed by landlord appeals.

One of the points they make, which is again very valid, is the current backlog in the court system and the inherent delays this is going to engender. Court appeals have the reputation of taking notoriously long to be heard, so you are talking, instead of an expeditious process, about prolonging the agony for all parties concerned.

They deal with the reconsideration by decision-makers, and it is their estimation that this is an unlikely solution. They say the proposed legislation does have mechanisms for reconsideration of matters that may have been decided in error, but while essentially a rehearing mechanism, it requires a nearly insurmountable onus on the party requesting the reconsideration to convince the decision-maker that a serious error has been made.

The next point they deal with is that there is no mechanism to deal with complex errors of fact. They have pointed out that it is quite unclear in the law how this proposed system would deal with complex errors of fact in law. Clearly errors such as the listing of services and facilities or the number of bedrooms contained in a unit could be dealt with readily. However, with issues of mixed fact in law or complex errors of fact, such as evidentiary issues of standards of maintenance or the proportion of a com-

plex that is found to be commercial in instances like those they would not lend themselves readily to the rehearing process and could not be decided on an appeal to the Divisional Court, since they are not errors of law.

They also elaborate on the situation where the parties have undergone an administrative review. While they acknowledge that the parties have a right to a hearing, they outline several instances where that hearing might not take place, either because they are not aware of their rights, or second, where something may happen later in the administrative review that triggers their desire for a hearing but it is too late to go to the hearing and they are denied it.

In these cases, there is no rehearing mechanism for administrative review. When we talk about the possibility of rehearing, it is only in the instances where the landlords and the tenants have chosen a hearing in the first instance. If they have chosen administrative review, they are out of luck. There is no rehearing in those instances.

They point out that appeals tribunals are more cost-effective and expeditious. This is certainly proven if you compare the cost of an appeals level tribunal with the courts. It is significantly less in time and in dollars. One might say, "Yes, but the Ministry of Housing doesn't have to pay for the courts," but I would say that the Attorney General's office has to pay out of its budget for the courts, so we are talking about taxpayers' dollars in either eventuality, but in one instance you have a much more cost-expeditious situation than in the other.

They also feel a specialized tribunal can better serve the public than the courts because there is an educational aspect involved, communication is far better, they are far more informal than the courts and they are more accessible. Certainly from the vantage point of both cost and intimidation, I think the appeals process through tribunal would be far better for the public than the courts. That is my own commentary, by the way.

Those are the major points the appeals board, which is now called the residential rent hearings board, has made. I think they have made an excellent case for continuing an appeals tribunal. They have also suggested that one way to cut costs would be to have a one-member panel, although I know both tenants and landlords would prefer three. They have suggested that if the minister is concerned about costs, that is one way in which costs could be curtailed.

I found it quite enlightening today, when Mr Glass gave his statistics as to the number of people who would be required under the new process and under the old process, that we are talking about virtually the same ballpark, because as I said in my earlier comments, by disbanding both the standards board and the appeals board I believe the government has done a grave disservice. In the final analysis, their new proposed system is not going to cost less. It is certainly not less complex. It requires the same number of people to administer, and in the meantime tenants and landlords have lost what I think is a fundamental democratic right, the right to appeal.

I cannot say I am very hopeful, because that would be first, dishonest, and second, naïve but I would be wishful that the ministry and the government would change their mind in this particular area. It is one that I think will mean



many tenants and landlords will not want to support their legislation and where tenants and landlords will feel there has been a grave disservice to them and a loss to the democratic process. Those are my comments at this time.

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**Mrs Marland:** I do not wish to be repetitive, so I will not address the comments of Ms Poole in detail, other than to say that I wholly and totally support her comments and her concerns.

It is amazing to our party that the socialist government of Ontario that stands for, supposedly—you would think from their platform that they are the only people who stand for the rights of individuals. The public knows they are not the only people who stand for the rights of individuals, but here is a piece of legislation that may, through the decision of one individual, the judgement of one individual, have an incredible effect on a very large number of individuals.

If it happens to be an adverse effect on a large number of tenants in this province, or it happens to be an adverse effect on a property owner in this province, whether it is the small landlord with two suites who has invested his lifetime savings in that building or it is a large corporation that through its investment has created a large volume of rental accommodation for the people in this province who choose to rent accommodation, and through that investment has also created jobs in the province, it does not matter really who it is because we would hope that everybody would be dealt with equitably.

It is unbelievable, when you look at whoever the players are, that it is the decision of one person, that all-powerful person who is in a position where he or she can decide and define things this bill does not define, and we have already talked about some of those repeatedly during our deliberations. We have talked about our concern that the bill refers to lack of maintenance, reduction in maintenance, neglect, whatever it is you want to talk about, without definition. We give the interpretation of this bill—it is like we hand it over with two hands and say to this rent officer, this human being: "Here is the power to make this decision, because this is the power that's given to you through this legislation. Unless you make an error, you're the only person who will make a decision on this matter."

It does not matter, as I say, whether it involves millions of dollars, thousands of dollars or hundreds of dollars; \$100 to one person is as significant and as important as maybe millions of dollars to another. It does not matter the amount or the players. It does not matter whether they are tenants or landlords. What matters here is that one person is making a decision and that is final.

I wish I had the time to research a comparison of all the other really significant statutes in this province today where the public has a right of appeal. We happen to believe that nothing should be so final that there is no right of appeal. We believe tenants and property owners have rights. We believe that in their rights there should be the opportunity to appeal a decision of a single individual, namely, the rent officer. Without the appeals board, that opportunity does not exist, and as far as we are concerned, that is totally and absolutely unacceptable.

If you really believed that Bill 121 was good legislation and that the intent of your legislation was to protect tenants—I was shown a letter this morning that went out to tenants over your signature, Minister. As a matter of fact, I just gave the letter back to my executive assistant, Mora Thompson. Otherwise I would have it in front of me; I have had it here all day. In your letter you are saying to the tenants, "Don't worry, folks, because we're going to pass this Rent Control Act and you will be protected from paying rents that are ineligible for increases the landlords are going after."

Where one individual, the rent officer, may make a mistake, where tenants are in a position where they can legally fight an illegal rent increase and the decision is made not in their favour, you are saying that is final; that is fine with you, and the same on the other side if it is the property owner.

What we are saying is that this is not fine with us. It is not fine with us that people cannot have an opportunity to have what may be a very significant decision heard by one other person or a panel of other persons. We are not hung up about the appeals board. Even now the Ontario Municipal Board, which hears all kinds of appeals, frequently only has one panel member sitting there, but at least it is a right of appeal.

I think your position on this legislation is totally opposite to the public position you take about protecting the rights of people. I think it is unbelievable that your public position says one thing and your other position, through this legislation, says something totally opposite.

Mr Chairman, if you are going to take the vote on this significant amendment, which I assume you plan to do—I do not know how long your speaking list is. Do you have other speakers?

**The Chair:** The minister.

**Mrs Marland:** I am going to ask that the vote be postponed until 10 o'clock tomorrow morning, which we can do either way; we can either agree to it amicably now or we can move a 20-minute adjournment when the vote is called. I think this is such a significant part of this whole deliberation we have been through that we should be able to have our members here to be on the record for a recorded vote on this matter. That is my request.

**The Chair:** Thank you, Mrs Marland. Of course you can raise that issue when we get to the point of a vote. Minister?

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**Hon Ms Gigantes:** Having thought about this issue and discussed it with people who have approached it from many points of view over quite a prolonged period of time, I have come to the conclusion personally, and it is the position of this government, that an amendment that would re-create the appeals board in connection with rent regulation would be a mistake.

If I were convinced and if this government were convinced that the existence of the appeal board under the RRRRA had proved itself some useful tool for either side in connection with deciding interests under rent regulation over the last few years, we would obviously take this



amendment very seriously. But there are many reasons to suggest that it has not been useful. It certainly has been a major cause of delay.

Members of the committee will be aware that current estimates by the Rent Review Hearings Board of its own workload indicate that it will take another year and a half, and perhaps more, to deal with appeals coming under the RRRR. The backlog has continuously been a large backlog; the amount of resources that have been put into the appeals board has continuously been a large amount of resources. The results of both the effort and the financial commitment have not, to my mind or in the view of this government, indicated the usefulness of the process from either the point of view of landlords or the point of view of tenants.

Take, for example, the matter that was cited in the communication from Dr Ray at the appeals board and mentioned by Ms Poole, the question of what happens once the appeals board process is exhausted. Then people still turn to the court. What happens at court? We find that landlord applications outnumber tenant applications five to one—not surprising—and I suggest we can expect that to happen if we set up 14 levels of appeal. We could expect that, in general, those who have easiest access to lawyers, who can pay lawyers' bills most easily, will go to court. It would not matter how many layers of appeal and re-appeal we put within the legislation or what grounds we suggested; there are going to be instances and there will be individuals, there will be corporations, there will be associations, that will say, "This decision is not acceptable; we feel that justice has not been done in this case."

We all know that no matter what systems we set up, we do not please everybody all the time. That is not to say we do not try to make provision within the legal system we set up to try to produce what will be a reasonable level of justice, fairness and good decision-making that would be accepted in a commonsense, practical and reasonable kind of way by most people involved as a pretty good system. That is what we are all after.

There are some matters where what is in balance—life and death, prison and non-prison and so on—would cause us to call forth within the regimes we set up around their regulation the greatest of care about the finest of legal points. I support that and this government supports it. Our party has been known to support those kinds of positions in the past well and ably, sometimes in defiance of the majority of public opinion, be that as it may.

When we come to the question of trying to determine the balance of interests under this particular legislative framework between and among landlords and tenants, our experience under the RRRR has been that the first round of decisions produced a result on a level of rents that was X. Those matters that were appealed to the rental appeals board historically and on average—again this represents nothing more than an average—produced a rent of X plus 1%. That has been over a period of time and has been with ups and downs around that average.

What that indicates to us is that, on average, the appeals process produced something that was not dramatically different from the original decision. Now that was with one

legislative framework, the RRRR. While we certainly objected to the results that were produced under the RRRR, we do not hold either the people who were employed as rent review officers—and are still employed as rent review officers under that framework—or the people involved in judging appeals at the level of the rent appeal board to be the least bit responsible for it. The dissatisfaction felt by large numbers of tenants about the decisions that were made related directly to the framework that was being administered. Their dissatisfaction was in no way mitigated and continues to be in no way mitigated by the existence of the appeals board.

Our experience has been that the appeals board, working away in a much-delayed framework that has caused much grief, confusion and anxiety for the people involved—particularly for tenants, because it is they who certainly feel its effects in the greatest numbers—working away to the best of its collective ability, produced a result that was not significantly different from the original decision.

Were that to be the case again with this legislation—I very much expect it would be because there are even fewer items to be considered and weighed when we get to the level of rents and the calculation of rents above guideline in this legislation than in the RRRR—I would expect that we would again see very little variation. Where we go to the trouble, effort, energy and devotion of resources and enormous waste of time from the point of view of the parties involved, we would again see a result that was not terribly different from the first-order decisions.

That being the case, I do not see good cause to provide through this legislation all the delay and extra cost that would be involved to add an appeals board to a framework which, after all, is going to provide hearings on a much more extensive basis than the RRRR. We feel the provisions of the legislation now under consideration are such that there will be easier decision-making and an easier understanding of the reasons for decision-making, so there can be a much speedier and therefore more effective process from the point of view of all involved than under the RRRR. To add an appeals board to that is not going to benefit people involved in most cases to any significant extent.

There will be appeals to the court. There always are appeals to the court. There will be with this legislation. They will be of a limited nature, but I point out to members of the opposition that we have deliberately entered in this act the suggestions of a wide range of people who have made comment on the legislation. We have put forward a proposal that provides for internal review of the first-round decision where it is the judgement of the chief rent officer that a mistake has been made in the decision, and we will still, I am sure, find that cases are taken to court, and again, most of them will be taken to court by a landlord, as they were in the past, even with the appeals board. We are not going to design legislation on this question or indeed on almost any question that will not be taken to court.

We feel that because the provisions of this bill have a great deal more transparency and are a great deal easier to understand in their application, there will be a much higher



level of consumer satisfaction, and in that group of consumers I count both landlords and tenants. I do not believe that adding an appeals board process to this legislative framework will increase that level of consumer satisfaction, nor do I believe it will contribute in any real sense to a greater sense of justice being done or fairness being provided. I think this legislation offers mechanisms to all those involved that will provide an understandable and fair process.

1650

**Ms Poole:** I have just heard one of the most bizarre comments we have endured during this entire process, and we have certainly heard some strange ones. The minister has said—I cannot believe she said it, but she said it not once but several times—that on average the appeals board produced something that was not dramatically different from the original, and therefore that proves the appeals board was not necessary. Using this somewhat strange logic, it means that if on the one hand a landlord had a rent appeal where his amount was reduced by 10%, and we had a second appeal where the tenant had his rent increased by 10%, therefore they cancel each other out, so justice is done. The world does not work this way. We are talking about justice and equity in individual scenarios.

What is absolutely incredible is that everybody except this minister and her government has said they want an appeal process in this legislation. The Tenant Advocacy Group has said it, the Federation of Metro Tenants' Associations has said it, the Federation of Ottawa-Carleton Tenants Associations has said it, the Fair Rental Policy Organization of Ontario has said it, the Association for Furthering Ontario's Rental Development group has said it, individual tenants and landlords have said it, and the opposition has said it. I am sure members of the government opposite may even have said it in private and unbeknownst to the minister. But I can tell you that the minister is the only person I have heard express the viewpoint that there is no need for an appeal in this legislation.

**Hon Ms Gigantes:** No, that is not accurate.

**Ms Poole:** Perhaps the minister could give us examples of other people who have said there is no need to have an appeal through this legislation.

**Hon Ms Gigantes:** The former minister.

**Ms Poole:** I think I said the minister and this government are the only ones, and I believe the former minister was part of this government, so I am not sure I count that as being a wide consensus across the province that we do not need an appeals board.

The minister has also used the fact I cited in my comments, based on the brief from the Rent Review Hearings Board, that even when there was an appeal people still took cases to court. This is true. Nobody has ever denied that. The difference is in the number of people who will take cases to court. It is an extremely expensive proposition. Not that many people took cases to court under the RRRA because there was an appeals mechanism.

Under this legislation, where you do not have that appeals mechanism, the number of cases going through the courts is going to increase. I think it is downright irresponsible in

a situation where we have the courts backlogged and where we have significant problems in the administration of justice because those courts are backlogged. To create legislation that is going to increase that backlog, the same as their Sunday shopping legislation where they said, "Let the OMB deal with our problems; let's increase the backlog there to even more gargantuan proportions," I think is downright irresponsible. The one who is going to pay is the little guy who cannot afford to go to court, whether it be the tenant or whether it be the small landlord. They are the losers in this proposition.

The minister has said that if this appeals board had proved itself to be a useful tool over the past few years, then of course they would have adopted it. My friends, including you, Mr Chair, my dearest of friends, I can tell you that there are many tenants and landlords in this province who are very grateful we had an appeals board and who thought it was a very efficient tool. I think it is a sad day for the people of this province when a government uses such specious arguments that hold absolutely no weight and no merit as the basis for denying what I think is a basic democratic right.

**Mr Abel:** I will be very brief. I do not believe the appeals board is necessary. I would like to make a comparison and perhaps it will justify my reasons why. I look to the Ontario Labour Relations Act. In there it makes reference to everybody having the right to arbitration. It also outlines the rights of an arbitrator or his jurisdiction. In there it is outlined that arbitrators, whether a single adjudicator or a three-party tribunal, have a much broader scope of jurisdiction than that of a judge. When they make a decision based on the information given to them, that decision cannot be appealed unless they go beyond their scope of jurisdiction or if there is an error in law.

The same applies here, so it is nothing new, nothing unique. That particular type of system has worked well since, I believe, 1975—it may have been before that—when this process came in. I have been involved for the last 12 years with arbitrations and contract negotiations and I have never heard of anybody being unhappy with that setup. It seems to have worked well. I strongly believe the same type of system will work equally as well under the new proposed law.

**Ms Poole:** A very brief response: Mr Abel and I have a very different perspective on this.

**Mr Abel:** It would not be the first time.

**Ms Poole:** Nor the last.

Mr Chair, could I call for the vote and a 20-minute recess and a recorded vote?

**Hon Ms Gigantes:** I think there are some other people who wish to speak.

**The Chair:** I do not have anyone else on the list.

**Mr Mammoliti:** I would love to speak on this.

Interjections.

**Ms Poole:** I thought I was the last speaker.

**The Chair:** We will adjourn until 10 o'clock tomorrow morning.

The committee adjourned at 1703.

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# Official Report of Debates (Hansard)

Thursday 30 January 1992

# Journal des débats (Hansard)

Le jeudi 30 janvier 1992

## Standing committee on general government

Rent Control Act, 1991

## Comité permanent des affaires gouvernementales

Loi de 1991 sur le contrôle  
des loyers

Chair: Michael A. Brown  
Clerk: Deborah Deller

Président : Michael A. Brown  
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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON GENERAL GOVERNMENT

Thursday 30 January 1992

The committee met at 1010 in committee room 1.

### RENT CONTROL ACT, 1991

#### LOI DE 1991 SUR LE CONTRÔLE DES LOYERS

Resuming consideration of Bill 121, An Act to revise the Law related to Residential Rent Regulation / Projet de loi 121, Loi révisant les lois relatives à la réglementation des loyers d'habitation.

**The Chair:** The standing committee on general government will come to order. The business of the committee is to review Bill 121 clause by clause. At the conclusion of yesterday's sitting we were discussing an amendment by Mrs Poole to sections 89.1 through 89.14.

**Ms Harrington:** Briefly, I wanted to let you know about some of the results from last spring's consultations. This is a one-page press release with some statistics of the mailbacks. About a million of the little householders were sent out, asking the tenants and landlords—any interested person across Ontario—to give us ideas as to how rent control should be handled in about five or six key areas. A substantial number of course were returned and the results were tabulated. The question here is, "Deciding rent disputes: Who decides what the rent should be? (a) Modify current system; (b) Two levels of hearings; (c) One hearing system." Out of the total returned, 32% said modify the current system, 10% said two levels of hearings and 48% said one hearing system. I just wanted to put that on the record.

**Ms Poole:** I thank the parliamentary assistant for sharing that information with us. Unfortunately it does not have a lot of relevance. The previous board was called the hearings board. That was the appeals board. Most educated tenants, in their minds, would connect hearings with appeals. So to them the fact that you had only one hearings board would mean that you had an appeals board. Other tenants who are not as familiar with the legislation would think this had nothing to do with appeal. The word "appeal" is not even mentioned in there. Many tenants would not be aware exactly what the modified current system is.

I have something that perhaps would be a little more specific to the issue. Elinor Caplan, in the second week of December 1991, which, as you know, was just a month ago, sent out 15,000 flyers on Bill 121 to tenants in her riding. She asked a series of questions concerning automatic hearings, appeal and capital reserve funds for new buildings. All of these indicated that they were important issues to tenants. I specifically refer you to the question, "Should the Liberal caucus support rent legislation that does not provide adequate appeal for rent review orders?" There were 119 replies: 109 answered no, which is 91.59%; 7% answered yes, which is 5.8%. We have also done this in another riding but have not yet tabulated the responses since they are still coming in, but from this quite limited

instance the vast majority of tenants were convinced that adequate appeal was a necessary part of the process.

I would make one other point, about the Labour Relations Board, which Mr Abel referred to yesterday. If we had only one body and if it was at arm's length, independently appointed and separated from both the bureaucracy and the political arm of the ministry, then I would find it far less problematic to have only that one level. But the problem is that if the one level you have is appointed by the ministry, they are ministry civil servants, policy direction comes from the ministry office and the minister's office and it is fully dominated by the ministry as far as policy and direction are concerned, then I think that is a very different case from an independent tribunal. Ontario is noted for the quality of our independent tribunals and how strong they are, and if that had been the government's alternative, to separate the one level from the Ministry of Housing, then it would be far less problematic in my mind.

When it comes right down to it, when we talk about appeals we are talking about a democratic right to make sure justice has been carried out. We have not yet finally determined what sort of hearing process there will be. That is still under discussion. I think the ministry will have something to say to that later today, because we have stood down that section. But I do reflect the concern of many tenants and landlords in this province that we have eliminated the right of appeal through a government body with the only remedy, in fairly exceptional circumstances, being a very costly and time-consuming process through the courts. As much as I appreciate the parliamentary assistant bringing her facts from that survey to our attention, I think the bottom line is that if you talk to tenants and tell them what this is about and what it means not to have that right of appeal, you will find that they are very strongly in support of retaining an appeal board.

**The Chair:** Further questions or comments to Mrs Poole's amendment to sections 89.1 through 89.14? Shall Mrs Poole's amendment—

**Ms Poole:** Mr Chair, I would like a recorded vote.

The committee divided on Mrs Poole's motion, which was negatived on the following vote:

**Ayes—4**

Jackson, Morin, O'Neill, Y., Poole.

**Nays—6**

Abel, Harrington, Lessard, Malkowski, Mammoliti, Owens.

**Ms Poole:** On a point of order, Mr Chair: I believe Mr Abel had his hand up immediately when we did, so perhaps he meant to vote in favour of this. I would just like that clarification.

**Mr Abel:** No, absolutely not.

**The Chair:** I believe the clerk called the roll.

**Mr Abel:** I was just so excited about voting against it.

Section 90:

**The Chair:** Questions, comments or amendments to section 90?

**Mr Jackson:** I referenced this section yesterday briefly. I have some concerns. Perhaps legal counsel could make it abundantly clear, but a point at law has very little to do with the application, on the face of it. It has to do with whether the process was followed in accordance with the act. This would not deal, for example, with the fact that there was a dispute over whether the roof needed repair. It would deal with whether the rent officer acted in accordance with the law or broke some other law in the process of processing the application. I would like that clarified, either from legal counsel or—

**Ms Baldwin:** I think I can speak to that. You are sort of right: it would not deal with the question of fact. It would not deal with the determination of whether the roof leaked. It would not be a question of whether the rent officer broke the law. It would be a question of whether the law was properly interpreted.

**Mr Jackson:** That is correct, so my concern here is that when we did not have an appeal process in the first instance, this is always the most convenient clause on appeals you can pull off a shelf to throw in so that you can say, "Oh, we do have an appeal system." But it really is a meaningless appeal since, when you go out and find a lawyer and he explains it to you, you realize that you have to have really caught the rent officer having broken the law and not challenged the decision or the conclusions the rent officer came to.

For this legislation to suggest that this is some sort of meaningful appeal for tenants, it really is not. Since tenants lack the resources to extend the process into the courts, and this has been generally the rule in this province, then this really becomes a clause that is a benefit to landlords if they wish to choose to pursue it. But certainly tenants are quite incapacitated from having this clause have any real effect.

1020

**Ms Poole:** I do not wish to belabour the point, because Mr Jackson has quite well articulated the current concerns of the opposition in this regard.

**Mr Jackson:** Both oppositions.

**Ms Poole:** Both opposition parties. I am sorry, Mr Jackson. When I say "opposition," I usually refer to all of us on this side of the table.

I just wish to state for the record that the Liberal caucus will not be supporting section 90, because we do not feel this is adequate appeal for tenants or landlords.

**Mr Jackson:** Could I please have a clarification? Since this obviously is a matter that then goes into the civil courts, all expenses of the ministry are borne by the ministry then, if there is no request for costs to be borne by the applicant and not by the ministry?

**Ms Harrington:** Is that a question?

**Mr Jackson:** It certainly was.

**Ms Parrish:** I am sorry, I am not quite sure. Usually the costs are awarded sort of in the clause, as you know, based on who won the case, but it is quite common that the courts will decide, because there was a novel matter of law being debated or whatever, that notwithstanding costs will not be awarded to the crown. I do not know if that is what you mean.

**Mr Jackson:** Do you have sufficient lawyers in your quiver to wander into a courtroom and protect these civil servants? That is another way of putting it. Costs are one thing, but then you have the presence of legal counsel accompanying a rent officer and/or a property standards officer from a differing jurisdiction, or whoever is being subpoenaed. They will need legal protection, and I assume the province will be picking up all the liabilities for property standards officers who are under there. That is all embodied in the concept of dragging people into court under an appeal.

**Ms Parrish:** If people take an application, they take an application against the government and not these individual people, and the province has lawyers who take these cases. Sometimes it is our own seconded legal staff, some of whom you have met, and some cases are handled by people in the Ministry of the Attorney General, the civil area, because the cases involve issues of jurisdiction or whatever and they are specialists in that area. So it is both.

**Mr Jackson:** And on the point of the liability of these subcontracted property standards officers from neighbouring jurisdictions, do we assume all their liabilities in that regard?

**Ms Parrish:** It is governed by the Proceedings Against the Crown Act, which deals with liability and so on. As you know, the usual standard is if you are pursuing your duties and powers and so on, then you are protected. If, for example, you are taking bribes or something, you may have a problem, but if you are pursuing your duty under a statute, you have the protections of the Proceedings Against the Crown Act.

Section 90 agreed to.

Sections 91 to 93, inclusive, agreed to.

Section 93.1, as amended, agreed to.

Section 94 agreed to.

Section 95:

**The Chair:** Questions, comments or amendments? Shall section 95 carry? Carried.

**Ms Poole:** Mr Chair, I think Mr Jackson had a comment.

**The Chair:** I am sorry, Mr Jackson. I got ahead of you.

**Mr Jackson:** That is okay, Mr Chairman. We are all wanting to get as much done today as possible. This rent registry is a matter which time did not allow us to get into in much detail because we were here to talk to wizards yesterday, but I have put on record that I asked the minister for a status report on the rent registry. This is an important issue and I would like to get a current update on that before I am prepared—quite frankly, I have heard a lot about delay and I still understand the rent registry is not ready. To the extent that this legislation is tied to the rent registry in a sense, I would like to find out just how far along staff at the Ministry of Housing have gotten the rent registry, because I certainly want that on record. I do not



want any more accusations of delay if in fact part of the problem is that the rent registry is not fully functional. Can I get some status report on that?

**Ms Harrington:** I will ask when that will be ready for you.

**Ms Parrish:** We did table a number of pieces of information. On January 22 we tabled a letter to Mr Brown talking about the number of buildings that are registered, and we indicated at that time that we have information on 60,603 buildings; 697,741 units are in those buildings. Then we broke down the seven-and-up buildings, because I believe that was an issue Mrs Marland was interested in.

For the complexes of seven or more units, our rent registrar indicated to us that the compliance rate is about 99.6%. This is a very large proportion of the larger buildings. Registry is still proceeding for the registration of the smaller buildings and there is a phase-in system under this.

**Mr Jackson:** Okay, I can read the letter. I was more concerned about when we, as members of the Legislature, were sold on the rent registry in 1986—and this is an incredibly expensive government operation. If we isolate this, you will find that the costs of this have been running—and several ministers of Housing are on record as explaining how expensive this has been. What I want to know very quickly and briefly is in what form—and I do not wish to challenge the numbers you have shared with us; I accept those. I want to know access points for tenants and landlords. It is my understanding that landlords have access to the registry for purposes of purchasing the building, to verify the legal rents so that they do not get caught being told one thing and buying something else.

When we were sold the concept of the rent registry under the previous legislation, we were sold on the rent registry because it became a registry for tenants to check. Again, I am still aware that when a tenant phones a regional office, he or she does not have access to that rent registry. That is the point at which I want to determine to what extent my tenants have access to that registry today or in the near future, because I know my landlords have access to it to the extent that the building in question is in the registry.

1030

**Ms Parrish:** Those are very important questions, and I am afraid I am going to have to undertake to get back to you. I am surprised to find out that tenants cannot do that. I know that in the central office, if you phone and ask, you can get an answer. Maybe it is not spread across the province.

**Mr Jackson:** My reference is to the southwestern office in Hamilton and not the Toronto office.

**Ms Parrish:** I am not the rent registrar and—

**Mr Jackson:** No, that is fine.

**Ms Parrish:** —I guess I do not know. I can only undertake to get back to the committee, and then I will copy it to you as well, since the committee will not be sitting next week.

**Mr Jackson:** If I might get a copy of that letter, I have misplaced the one that was circulated, since I was not on committee that day.

**Ms Parrish:** I have a copy right here.

**Mr Jackson:** Thank you.

**Mrs Marland:** Mr Chairman, I wish to apologize to the committee for being late this morning. I was delayed by a television interview because of a mechanical problem at the station.

I want to comment on this section we are dealing with now, but I also want to state for the record that had I been here for the Liberal motion to sections 89.1 to 89.14 regarding the appeal board, I would have been voting in the affirmative for the amendment.

**Ms Poole:** Thank you.

**Mrs Marland:** My thoughts are in yesterday's Hansard in terms of my support for that motion, and I am sorry I missed the vote this morning.

However, I am interested just to very briefly ask a question about section 95.1.

**The Chair:** We are discussing section 95.

**Mrs Marland:** Section 95.1?

**The Chair:** No, 95; I will call 95.1. Mr Jackson had a concern about 95, actually, after the vote was taken, and I permitted him to place that concern.

**Mrs Marland:** Thank you. I will wait.

**The Chair:** Mrs Poole, did you wish to speak to 95?

**Ms Poole:** I was just surprised by Mr Jackson's comments that tenants did not have access to the registry information, because that certainly has not been my experience. Obviously I am only dealing with the central office, which handles Metro Toronto inquiries. As far as the rent registry is concerned, from all the information I have had it is up and operating and it is fully accessible to tenants to determine the maximum legal rent for their units and any other information, and there has been no attempt to deny tenants the right to this information. I know the ministry has undertaken to check this, and perhaps it is different in various areas. If this is the case, that in certain areas of the province tenants are not receiving access, I hope the ministry will act very quickly to remedy it, because it certainly is not fair when in certain areas of the province tenants do have that right and that protection and in other areas they do not. But to the best of my knowledge and belief I have not heard of cases where tenants have been denied that access.

**Mr Jackson:** I just forgot to clarify—I would not wish Mrs Poole to get the impression, since I know all other members of the committee did not get the impression, that in any way tenants are being denied access. That implies motive or intent. If Mrs Poole is familiar with my questions in the House over the last three years she will know that they have focused in the area of the technical complications with this software and the hardware associated with this, and the verification and the lack of personnel. My questions to Housing ministers Sweeney, Curling and Hošek are a matter of record.

So I did not and I am sure Mrs Poole did not intend to imply that in any way there was a covert or overt attempt to deny it. I was simply referring to the inability to have the information in order to transmit it. That is all I have said. Just so that is clear.

**Ms Poole:** Perhaps it would help if there were a clarification that there are two different ways tenants can be



notified of their maximum legal rent. One is through written form and the other is orally over the telephone—dare I say it?—when they phone down to get confirmation of their maximum legal rent.

When Mr Jackson made his comments, I was of the understanding he was referring to the fact that tenants could not get this information in either form. I know there were difficulties with the written form. In fact, the ministry a number of years ago began sending out this form to tenants identifying their maximum legal rent. They ran into all sorts of technical problems where the occupancy had changed and difficulties with the form, so partway through the process they withdrew the effort to notify tenants in writing. But to the best of my knowledge and belief, tenants have had access orally.

Again, I would appreciate receiving confirmation from the ministry whether in all areas of the province tenants have had the right to receive that information, if not in writing, at least by telephone. I know the ministry may not be able to provide it at this given moment, but some time during the course of the day I think that would be helpful to us.

**Ms Harrington:** We thank both opposition parties for their concern about this. We do share your concern that this operate well for everyone.

**Mr Mammoliti:** On a point of information, Mr Chair: I was just trying to figure out the system here.

I am just wondering—

**The Chair:** You are concerned about the process.

**Mr Mammoliti:** I am just wondering whether my name was documented in the last vote.

**The Chair:** I could ask that the clerk re-read the call of the recorded vote, if that would be helpful to you.

**Mr Mammoliti:** No, I am just wondering, because my hand did not go up, if it was documented.

**The Chair:** The only thing I can do, Mr Mammoliti, is ask the clerk to call out the names that were involved in that vote.

**Mr Mammoliti:** Yes, if you do not mind.

**The Chair:** If you would just like to call the recorded vote for Mr Mammoliti's information.

**Clerk of the Committee:** The question being put on Ms Poole's motion, it was lost on the following division:

#### Ayes—4

Jackson, Morin, O'Neill, Y., Poole.

#### Nays—6

Abel, Harrington, Lessard, Malkowski, Mammoliti, Owens.

**Mr Mammoliti:** Okay, I was just wondering—

**The Chair:** Thank you, Mr Mammoliti.

**Mrs Marland:** Mr Chairman, it is correct that on a recorded vote we do not have an option of abstaining, is it not?

**The Chair:** Everyone who is in the committee room at the table must vote.

**Mr Mammoliti:** So everybody who is in the room must vote.

**The Chair:** Correct.

**Ms Poole:** At the table. At the table, or in the room?

**Clerk of the Committee:** At the table.

**The Chair:** At the table.

Section 95 agreed to.

**The Chair:** Questions, comments or amendments to section 95.1, which is a government motion as printed? Mrs Marland is the first on my list.

**Mrs Marland:** A government amendment as printed. Paragraph 95.1(3)4—are you dealing just with 95.1(1), or can we talk about everything in the amendment?

**The Chair:** I was dealing with the entire section. If the committee wishes, we can deal with each one as we go through.

**Mrs Marland:** No, I am happy to deal with the entire amendment, which includes all the sections under 95.1. I am addressing subsection (3), paragraph 4, "The number of bedrooms and the suite number or other means of identification for each rental unit to which sections..." etc.

Madam parliamentary assistant, there are examples where if you are dealing with registering rent, it is important, if you are going to talk about the number of bedrooms—it has been proven, unfortunately, that maybe we should talk about the number of bathrooms as well. A rather infamous case which is being reviewed right now is the argument in favour of a rent increase, an argument based solely on additional bathrooms being made. I think that if a rent is registered on a unit and the unit is described by the number of bedrooms and then the argument is made to increase the rent because the unit has been substantially changed by the addition of bathrooms, it may be very important in this section to include bathrooms.

1040

**Ms Harrington:** I had not thought of that, but certainly you never know what changes might be suitable in the future. Would you like to comment on whether that could be vamped up?

**Ms Parrish:** These units, of course, are all units that get the five-year exemption, so we do not control their rents during the period at all. All we are trying to do is to identify that a building has five two-bedroom and one three-bedroom and two penthouses and so on, so that when they come out of the system we have kept track of them. The purpose of the bedrooms is really just a method of identification. If people want to put in bathrooms, I guess it is another way of identifying that this is the unit that was exempt and is now coming in. Anyway, during this five-year period, all we do is register them. We do not control their rent increases at all. Then they come into the system at their actual rent at the end of the five-year period. I do not know if that answers your question.

The other thing is that landlords are always concerned that they have to tell us lots of stuff. All we are really trying to do is to identify the building in some way, so I do not know whether it is necessary. I guess there is no harm



to it, except that landlords might feel, "There sure is a lot of stuff we have to give them."

**Mrs Marland:** This is talking about "every landlord of a new residential complex," and this is the point. Can a residential complex be less than six units?

**Ms Parrish:** Yes.

**Mrs Marland:** That is what I thought. So if I give you an example of a residential complex with four units and, to comply with this section, it is now described as a "new residential complex"—

**Ms Parrish:** That is right. It has never been rented in the past and it has never been lived in in the past. That is what a new complex is.

**Mrs Marland:** Right. But if it is being registered today, Colleen, and that complex is changed down the road to justify that we now have a new complex, new rental units, I think if you are registering it for the sake of the rent, you should also register it for—you are looking for a description of the unit and you are registering the rent. I think in fairness it is better to say "bedrooms and bathrooms." I do not think adding the bathrooms is a very big deal, but it is if you start to argue in the future, as a landlord, that this is not the same unit. Substantially changing a unit is very relevant, but if you are registering it as two bedrooms and it is changed to three bedrooms or down to one bedroom, what the rent is is relevant to what the accommodation is.

**Ms Parrish:** I just would point out that under section 95.1 you do not register the rent at all. Because we do not control rents during the five-year period, we do not register the rents. We do not know what rent they charge. It is only at the end of the five-year period. If they want to reconfigure this during the five-year period, they certainly can. But I agree with you; it is really a question for the committee as to whether it would be appropriate to ask them to register this information. For a five-year period it makes no difference to the rent, because the rents are not controlled. When they come out of the system they come into the regular system in which conversions and reconfiguration are dealt with under this section. During this five-year period all we are trying to do is to identify the units. But it is really a question as to the comfort level of the committee; I cannot say.

**Mrs Marland:** It may not be as important now as five years from now. Personally, because it is the very argument that is being used in a situation currently being challenged by a tenant, in which the defence of the landlord is around the number of bathrooms, I just think it is an opportunity to have it on record.

**Ms Poole:** While I appreciate the fact that Mrs Marland brought this forward and I can understand why she is concerned, since there is a contentious case right now in that regard, basically when you are looking at rental accommodation the number of bedrooms becomes extremely important. However, if you start adding things like the number of bathrooms, you probably also have to start adding things like whether there is a dining room, whether there is an en suite, whether there is a kitchen, whether there are two kitchens, whether there is a separate living room, and this type of information. It could get extremely

complex. I would assume that in any hearing where they are looking at a rent increase there could be evidence produced which would show that there was one bathroom at one stage and there were two bathrooms at another stage, and that it could be done through evidence as opposed to having to retain it actually in the legislation.

Motion agreed to.

Section 96:

**The Chair:** Are there questions or comments to subsection 96(1)? Shall subsection 96(1) carry? Carried.

Subsection 96(2): Questions or comments? Shall subsection 96(2) carry? Carried.

We have a Liberal amendment to subsection 96(3).

Ms Poole moves that clause 96(3)(a) of the bill be struck out and the following substituted:

"(a) a tenant of a rental unit in the residential complex requests the registrar to do so and in the circumstances, it would be reasonable to do so; or"

**Ms Poole:** This subsection relates to the fact that the registrar may require a landlord to register notwithstanding the fact that he has less than three units, and it prescribes the particular circumstances. When the legislation was first introduced I asked the ministry specifically what type of cases this would cover, where a tenant could successfully apply to have his unit registered. They said they felt it would be used in circumstances where the landlord had a history of asking for illegal rent increases or where there had been problems in the past, so it was this type of special circumstances.

The way this is phrased right now, it would be automatic if a tenant requests that it be registered, even if there is no rationale for doing so. I think what would happen is you would have a patchwork quilt where a number were registered and a number were not, under four units, without any rationale for why it would occur. What we have done is to give the registrar two choices: if the tenant asks for it and it is reasonable, or if in the opinion of the registrar in the circumstances it would be reasonable. So it does not necessarily have to be a tenant request, but in both cases it would have to be reasonable to do so. I do not know; this may be just a minor slip and the ministry may have intended it to be in this form, but certainly if it is to have the effect that the ministry policy people originally told me, I do not think it would do so in the current form.

**Ms Harrington:** We have discussed this with the minister. It is a fairly small difference between the wordings we are talking about here. We have come to the conclusion that the registrar does have discretionary power on whether to require a landlord of a complex in the one to three units to register when a tenant of a unit requests it. We believe that what we have put down does cover any situation where the tenant requests it or it would be reasonable to do so.

1050

**Ms Poole:** If it is the case, as I originally stated, that it was only particular circumstances in which a tenant's request would be accepted, then what would be the harm in adding "and in the circumstances it would be reasonable to do so"? All it does is give direction to the registrar that it would not



have to be an automatic thing. Just because it is permissive, where it says "the registrar may" do this, does not mean that without direction the registrar would not automatically do it.

The intent should be that it be done where it is reasonable. If there is absolutely no rationale whatsoever for registering the unit, then why would the registrar do it? If that is the case, then what is the harm in including those words?

**Ms Parrish:** Perhaps I might speak to this from my understanding of the minister's view. The long-term goal of the registration system is to register all units. That is why, for example, we register anybody who asks for an above-guideline increase.

The reason we do not do a sort of holus-bolus registration of one to three units is the cost, inconvenience, the difficulty of communicating to the landlord-and-tenant community, the desire to be cost-effective and so on. But the long-term goal is to register everything so that tenants will know when they want to rent someplace what the rents are and landlords will know what they are entitled to charge. This will also facilitate the sale of properties and so on.

The thought was that if people want to have their unit registered, there is no reasonable situation to deny it. It is always reasonable to register. It is not negative to register. We simply register what people are entitled to charge under the law in any event. It is really a sort of recording. The view of the minister is that it is always reasonable, if people want to have a registration, to comply with that registration request.

**The Chair:** Further questions or comments on Mrs Poole's amendment.

**Ms Poole:** It is clear the ministry is not going to accept it. It is also clear there has been a revisitation of the purpose of this section since it was originally introduced under a different minister. I am not happy about it but I will leave the debate right here.

Motion negated.

**The Chair:** Shall subsection 96(3) carry? All in favour? Opposed? Carried.

Shall subsection 96(4) carry? Carried.

Shall subsections 96(5) and 96(6) carry? Carried.

Section 96, as amended, agreed to.

Sections 97 to 100, inclusive, agreed to.

Section 101:

**Ms Poole:** This is just a grammatical point, but in the last line of section 101 should it be "becoming the landlord"? I do not feel strongly about this. I just thought it read kind of funnily.

**Ms Harrington:** I am looking for a suggestion that we could use something other than the word "landlord" within the next few years.

**Ms Poole:** I would certainly wholeheartedly support that since the word "landlord" comes from the medieval times. I was just wondering whether there should be an adjective there.

Section 101 agreed to.

Sections 102 to 104, inclusive, as amended, agreed to.

1100

Section 105:

**Ms Poole:** I want to briefly speak to section 105. Under this particular section, if there is a reassessment under the Assessment Act which results in a decrease in municipal taxes, then the registrar may decrease the maximum rent in accordance with it. But I do not believe there is any provision in the act that would provide for an increase in assessment due to a reassessment under the Assessment Act.

This is going to be an extremely significant section if market value passes. In Metro Toronto for instance, it would affect a large number of tenants. Under this section, the tenants who live in areas where the reassessment would lower their assessment would benefit, but in all fairness, in instances where the landlord is forced to pay a larger assessment because of the reassessment, why is there no provision to automatically increase the maximum rent in those cases? It is most unjust that in this particular case the ministry has chosen to reflect only one side of the assessment issue.

**Ms Harrington:** If the taxes go up that significantly it would be an extraordinary operating cost and would be allowed to be reflected in the rents. Is that not in the same vein?

**Ms Poole:** It would be reflected in the guideline increase; however, not necessarily to the full effect of the tax increase. For instance, in areas where a landlord has already gone for capital repairs in that particular year after which the building is assessed, the landlord could not even go for extraordinary operating increases. There are certainly situations in which this is the case. In fact, it is also the case for decreasing the maximum rent if the assessment lowers; tenants are allowed to go for an extraordinary operating decrease.

So that is not really an argument, because again you have only presented one half of the picture. In all sense of fairness and equity I do not believe that is right.

**Ms Harrington:** You are giving one specific instance when you feel the landlord could not get the pass-through or rent increases for an increase in municipal taxes when he has already gone for capital.

**Ms Poole:** That is right.

**Ms Harrington:** I understand that. Eventually it will be reflected in the building operating costs to some extent as well.

**Ms Poole:** Part of it is reflected in the guideline, but there is a limit, a cap of 3% for extraordinary operating increases. In instances where there is a very large reassessment—and in cases in Metro Toronto we are looking at significant reassessment; in fact the city of Toronto issued a report about three or four years ago by Dr Enid Slack, who was commissioned to do a study on the impact of market value assessment on tenants. It was deemed to be a very serious negative impact. As a city of Toronto member, I am quite familiar with this issue and am very concerned by it. The Federation of Metro Tenants' Associations is very clearly on the record as being opposed to market value assessment because of the significant impact it would have on the rents.



With this legislation you have placed a cap of 3% above the guideline. You have also said that if a landlord goes for capital repairs, the landlord could then not claim the extraordinary operating, or else the landlord has a choice, if you want to put it in other terms. First of all the cap would prohibit the landlord from realizing the full amount of the increase, and second, in some instances the landlord would not receive any of the increase.

The argument I put to you once again is that under the legislation it is the same four decreases. Tenants can still have an application for an extraordinary operating cost decrease. The situations are identical except that in one you will offer a remedy to decreasing the maximum rent and in the other you will not offer a remedy to increase the maximum rent.

**Ms Harrington:** I think what you are saying is that if people are applying for a decrease there is no cap involved, but when they are going the other way we are putting the cap on.

**Ms Poole:** There is that, plus right here it says very clearly in the act that automatically the registrar may decrease the maximum rent if there is a reassessment under the Assessment Act. I have not yet heard a justification why there is not a parallel section saying the registrar may increase the maximum rent if there is a reassessment under the Assessment Act that applies and results in an increase.

**Ms Harrington:** What I understand is that we are allowing both ways only, as you have pointed out—if the landlord has already got that extra pass-through with capital then he is not able to get both, and the fact that we have imposed a cap. I think we all understand why that is there. It is a very important part of this legislation. You are trying to show that there is a balance in both directions and to some extent there is, but you have also pointed out that it is not a full balance in both directions. Maybe I could ask staff to try to ensure that my view is the way it is.

**Ms Poole:** Just before Ms Parrish answers I would add one further thing. She might correct me if I am mistaken in my interpretation, but I look at this section and to me this appears to be automatic, that there need not be an application, that the registrar has the authority to calculate the decrease, notify the landlord and send out the notices without any application. If this is the case, I wonder why you do not then do it on the other side of the equation.

**Ms Parrish:** I think the explanation Ms Harrington has given is an accurate one. I do not think it would be appropriate for me to engage in the debate about the merits or otherwise of market value assessment. I simply comment that my understanding is that the purpose of this section is to recognize that when there is a reassessment the landlord knows it. They know they have been reassessed up or down, but tenants frequently do not know this. There are many more tenants than landlords, and if they all made individual applications where you had a market value assessment we would be flooded with thousands of applications. This is largely intended to be a facilitative mechanism in order to deal with what could be a very large number of applications in a fairly quick way.

In the case of landlords, they know and have the ability to apply within the rules. As well, I understand that for

some municipalities the inability to ensure that cost savings associated with downward market value reassessments for rental properties are not passed on to tenants is a barrier to their acceptance of market value assessment and that if this mechanism were in place they would be more receptive, because they would be able to be assured that the tenants would benefit from any downward assessments. That is my understanding. I understand your points as well, but this is the explanation I can give you as to the rationale behind this section.

**Ms Poole:** Ms Parrish has just given me a second reason for voting against it: first of all the matter of equity, but second, I could not support in any way, shape or form anything that would assist market value assessment being passed in Metro Toronto, not to say that I am reluctant to have property tax reform; just not that particular kind.

Mr Chair, I think I have made my points quite clearly. I find the argument, "Landlords know about it and there are not very many of them so let them eat cake, basically let them apply," a fairly inadequate one vis-à-vis the equity argument. Certainly I can say we will not be supporting this amendment.

Section 105, as amended, agreed to.

1110

**The Chair:** Section 105.1, as reprinted. Questions, comments?

**Mrs Marland:** Mr Chairman, is section 105.1 the simplest way this can be worded? That is a horrific piece of wording.

**The Chair:** By the rules I cannot.

**Mrs Marland:** It is absolutely incredible to read through that and realize that they actually have 11 lines of print with one comma. That is very difficult for people to—

**The Chair:** Legislative counsel would be pleased to respond to you, Mrs Marland.

**Ms Baldwin:** I could fix this subsection by making it into two subsections. The first subsection, if you follow along, would read:

"If the maximum rent for a rental unit includes a capital component, the registrar shall give the landlord and the tenant of the rental unit written notice that the maximum rent will be decreased by the amount of the capital component."

Then there would be a new subsection that would say:

"The registrar shall give that written notice at least six months before the date on which that capital component is to be deducted from the maximum rent as set out in the most recent order or notice of carry forward that refers to the capital component."

**Mrs Marland:** I think that would help. I just think it is too horrific the way it stands. The content is pretty horrific anyway, but the way it is presented is dreadful. I think if we could do that, Mr Chairman, it would make it a little easier, even for the lawyers who are going to have to be hired by the property owners to interpret this bill for them.

**Ms Harrington:** I think you make a good point, Mrs Marland: that one sentence with that number of complications would be better served by breaking it up. We would agree to your request.



**The Chair:** As a matter of procedure, then, I think we have agreement. Will we stand this down while counsel drafts the appropriate amendment to take into account what she has just said? Can I have unanimous consent to stand this down pending the drafting of the amendment? Agreed.

Section 105.2?

**Ms Harrington:** Mr Chair, the government has an amendment. This section is with regard to the costs no longer borne and when they are taken out. I would like to read it.

I move that section 105.2 of the bill, as reprinted to show the amendments proposed by the minister, be struck out and the following substituted:

"Reduction of maximum rent

"105.2(1) If the maximum rent for a rental unit includes a capital component, the registrar shall decrease the maximum rent for the rental unit by the amount of the capital component.

"Idem

"(2) The effective date of the decrease shall be the date for the decrease set out in the most recent order or notice of carry forward that refers to that capital component."

**Mrs Marland:** Excuse me, Margaret, that is not what is printed here.

**The Chair:** What is the date of that amendment?

**Ms Poole:** I believe it is January 14.

**The Chair:** It is in your package of January 14.

**Mrs Marland:** I have the January 14 package. We have not used that for a while.

**Ms Harrington:** Just to explain that, the change clarifies when the rent decrease takes effect, namely the date provided for on the order, not when the registrar calculates the rent decrease for the costs no longer borne to come out of the rent.

**Ms Poole:** Mr Chair, the Liberal caucus will be supporting this provision since we have supported for a number of years the inclusion of costs no longer borne provisions in the legislation.

**The Chair:** Thank you. Further questions, comments to Ms Harrington's amendment to section 105.2?

**Mrs Marland:** Well, good luck.

Motion agreed to.

Section 106 to 108, inclusive, agreed to.

Section 109:

**The Chair:** Mrs Poole moves that clause 109(a) of the bill be struck out and the following substituted:

"(a) where the circumstances warrant, commence or cause to be commenced proceedings if the minister has reasonable and probable grounds to believe that a person has failed to comply with this act or an order made under it; and—"

**The Chair:** An explanation, Mrs Poole?

1120

**Ms Poole:** We are now getting into the sections where a director may have inspectors go in and investigate cases, in the ministry's words, "of an alleged failure to comply

with this act." We are quite concerned about the wording used here. If you look at the original section 109 as proposed by the ministry, it reads "in respect of an alleged failure to comply with this act or an order made under it." What this means is that if an allegation is made, even if there is absolutely no substantiation whatsoever, no supporting evidence, no reasonable grounds, notwithstanding that, "The minister shall, where the circumstances warrant, commence or cause to be commenced proceedings in respect of an alleged failure."

We would be far more comfortable if there were a more reasonable test than "alleged." Our feeling is that "reasonable and probable grounds" is not a particularly onerous test to meet. It does give the director and the minister discretion, which the ministry I am sure would be quite pleased with. It seems to me that any time you say you are not willing to put in that there be a reasonable test, then you are denying a basic tenet of democracy, which is that there should be some element of proof.

We are not saying that they need a solid, ironclad case that there has been non-compliance with the act; we are just saying to let there be reasonable and probable grounds and that there be some evidence provided that there has been a breach of the act. I do not think it is an unreasonable amendment. I would not say I am optimistic, but I am at the very least wishful that the ministry would consider adopting it.

**Ms Harrington:** The ministry has looked at this. Obviously we have wanted to change it from the previous legislation. I do not recall exactly how it was worded there. We feel that reasonable grounds are needed, say, for a charge or for a search warrant, but in this case, to investigate, it should be a little broader than that. Could you comment, Ms Parrish?

**Ms Parrish:** We have done a lot of work on the area of ensuring that the provisions of the act, including search and seizure, warrantless entry and so on, comply with the charter and with the current case law in this area. The point I am making is that there are times when it is appropriate to require reasonable and probable grounds to be the test; for example, in section 114 where it has to be reasonable and probable grounds and the information has to be given under oath. Here what you have essentially is simply information which leads you to inquire further. You may then decide that you have obtained reasonable and probable grounds, and at that stage you have to obtain a warrant under oath and you give the grounds. But this is just the triggering stage.

You may recall, for example, in an earlier amendment which we had been discussing and I think is now stood down, that you put forward another proposal that said that where the rent officer directed an inspector to look into a possible case of false and misleading information—you did not say at that time they had to have reasonable and probable grounds. What you said was that they should look into it, and when they look into it, if they have reasonable and probable grounds, they might very well get a search warrant to obtain the material that might have been misleading or to obtain some other further action or to lay a charge under the statute.



But at the first stage all you are really doing is saying, "Start the investigation," which, if it is a truly off-the-wall allegation, could be resolved by a few phone calls. As you get further into the investigation there comes a time when it is appropriate to have the standard of reasonable and probable grounds, oaths, search warrants and all the protections. At this stage we do not think it is appropriate and you would have difficulty in passing the test. It would prevent any investigations from proceeding down the road where you could look into the issues.

**Ms Poole:** I personally do not feel that the two situations are all that analogous. Is that the right word, "analogous"?

**Ms Parrish:** Analogous, yes, comparative.

**Ms Poole:** When trying to compare the two situations, in the former one that Ms Parrish mentions the rent officer is in a hearing and obviously evidence is produced on which the director or the rent officer makes this determination. Under these particular circumstances it just says "an alleged failure" without any type of evidence to be produced or any indication that there is merit to it. While I can understand that you obviously want a strong test when you get to search warrants and matters in that regard, it seemed to me that during the hearings portion of that there was a lot of dispute about the search warrant section and how easily investigations into a landlord's records could be done and how far it would go and these types of questions. It seems to me that this is just a reasonable protection to put in which would not prohibit a reasonable allegation from proceeding.

**Ms Harrington:** I do like the word "reasonable" as much as you do—

**Ms Poole:** But not here.

**Ms Harrington:** —but we have decided that the words "alleged failure" are what we want in the section.

**Ms Poole:** I do not think the parliamentary assistant can say it much plainer than that, so I have a feeling I am going to be wasting my breath and the committee's time. I think we may as well proceed.

**Mrs Marland:** There probably would have been a time in the past few years where a section in any bill pertaining to any matter in this province, a section that was worded the way this is, would have been compared to Russia or communist bloc countries which have lived under a regime where government was almighty, had all the power and whatever it wanted to do was within that power and the rights of individuals, the opportunities of individuals were considered. However, the people who live in the new countries that were part of the Union of Soviet Socialist Republics now perhaps live under a better democratic governance than do the people of Ontario with this kind of legislation.

Interjections.

**The Chair:** Order.

**Mrs Marland:** It is always interesting that when you make comments that suggest what is going on in Ontario today the government members have to start interjections, because they know as well as I do what this socialist government is doing in Ontario.

**Mr Owens:** What about Brian Mulroney in Ottawa?

1130

**Mrs Marland:** That is the other line we always get, the other interjection.

**Mr Owens:** That democratic Prime Minister of ours. That is what you see with a Tory government.

**Mrs Marland:** They cannot accept any criticism of what is going on in Ontario today. This section demonstrates it better than any. The comments we always receive from the government members are about what is going on in some other jurisdiction. What we are debating here is what is going on in Ontario today. If you have ever read anything—

**Mr Owens:** We did not bring up Russia, and the Ukraine is not part of Ontario.

**The Chair:** Order. Mrs Marland has the floor.

**Mr Owens:** You should read your atlas.

**Mrs Marland:** If you have ever read anything that was comparative to what used to go on in those communist bloc countries where people did not have an opportunity to exercise their freedom and rights under a democratic government—now, fortunately for those people, they have that.

**Mr Mammoliti:** You did a wonderful job for 43 years.

**The Chair:** Mr Mammoliti.

**Mr Abel:** Well, he's right for a change.

**Mr Mammoliti:** She is comparing us to communism.

**Mr Owens:** Where's Hugh Segal when you need him?

**Mrs Marland:** At the same time that those countries, fortunately for those people, are making progress towards freedom and democracy, this particular section is putting Ontario back into a governance that ignores the rights of individuals. Here we are talking about a section dealing with something that is alleged and not something that may be reasonable, may have probable grounds. No, we are dealing with a section that refers to allegations, and allegations that deal with a very significant part of this act. In other words, where there has been alleged failure to comply with any part of this act, this section comes into force based on allegations alone.

If we ever thought we would see this kind of legislation in Ontario—I guess, worse, it is going to be a while before the Ontario people get to realize what this Bob Rae socialist government is about. If anybody who has to comply with this act has, based on allegations, failed to comply, then the mighty power of the Bob Rae socialist regime will fall on his head.

The Liberal motion is very reasonable. The Liberal motion is not saying that if they are not in compliance with the act they should not be penalized; it is simply saying, with respect to an alleged failure, why do we not make sure it is not just alleged? Why do we not say, as Ms Poole has said in the Liberal amendment, that it has to be reasonable and probable grounds? No, they want to say if something is alleged. There is not anywhere in the world where people who live in modern democratic countries are guilty by allegation. If it is alleged that you have failed to comply with this act, how can you be guilty by an allegation?



According to the Bob Rae socialist regime, that is fine with it.

This section is not acceptable in the printed wording of this bill. We will be asking for a recorded vote on this Liberal amendment and ultimately on the government section 109 as it is printed. I cannot believe that either tenants or landlords would be treated the way this section is worded under this powerful, uncaring, undemocratic approach.

**Mr Jackson:** I have a quick question to legal counsel who are present. Can they direct us to any other clause in any other legislation which speaks to this issue of "alleged"? It comes to the point of where there is a false accusation. This basically can hide the accuser, whereas if it simply flows from the ministry then the ministry at all times is responsible to move on the basis of their investigations.

This is a point of law and not a point of legislation. Under this legislation one can simply respond to an allegation and cause an action. Those are two very significant, different points of law. I have two questions there. Perhaps legal counsel can enlighten the committee.

**Hon Ms Gigantes:** I think Colleen is prepared to answer that.

**Ms Parrish:** Perhaps it would be helpful if I read aloud from the provision in the RRRRA. It says, "The minister shall investigate cases of alleged failure to comply with an order made under this act or to comply otherwise with the provisions of this act and, where the circumstances warrant, commence or cause to be commenced proceedings in respect of the alleged failure to comply." These provisions do exist in another statute, they exist in the current statute. I think there may be some concern that when you use the word "proceeding" we mean criminal proceeding or quasi-criminal proceeding. The proceeding that may be generated could very well be an application to determine the maximum rent, for example, where there is some sort of dispute about what it is or what it is not.

The problem with this is that every investigation has a starting point. If you want to do something intrusive and later on we have things like search warrants or charging, then yes, you have to have reasonable and probable grounds. What Mrs Poole's amendment says is that before you even make a phone call, before you even make some reasonable inquiry you must have reasonable and probable grounds to believe that the person has done the thing you are inquiring into.

**Mrs Marland:** That is right.

**Ms Parrish:** What we want to say and what clause 109(a) says as currently printed is that you start your investigation in a neutral way. You do not assume anybody has done anything, you simply do an investigation or start your proceeding, such as a hearing, to determine maximum rent or whatever. Later on, when you have reasonable and probable grounds to believe that there may be an offence under section 114, under oath you must obtain a search warrant. If you charge somebody you must have the grounds to charge them. At the very beginning, under clause 109(a), where you start out you must not assume anybody has done anything contrary to the act. You must conduct a neutral investigation.

I certainly agree it is a very important protection in our law that you have reasonable and probable grounds before you commence any action which is intrusive. Subsequent sections in the act provide for that. However, at this stage it is equally important that any action taken is neutral and makes no assumption that anyone has disobeyed the law or done anything wrong.

**Mr Jackson:** I do not challenge the efficacy of everything I just heard, I just challenge that this wording is deficient in reflecting what was just said. My point is simply that when the RRRRA section was read to me reference was made to the kinds—I am addressing counsel; I will just be patient if I may.

**Ms Parrish:** I am sorry.

**Mr Jackson:** No, do not apologize. I do want to respond to you and your comments and I have no problem waiting. When you read to this committee the clause from the RRRRA you referenced the concept of an investigation. That is my whole point.

1140

**Hon Ms Gigantes:** It says "proceedings."

**Mr Jackson:** Then perhaps you could read the section again. I heard the concept of an investigation. You spoke at length about an investigation and starting from a neutral position. That is my point. Mrs Poole, in her clause, is suggesting that "reasonable and probable grounds" covers it. I understand what that means legally; that you have to have established that test in a court of law in order to proceed.

Section 109 does not include those assurances, it provides those assumptions. It simply says, "You can proceed on the basis of an allegation." I listened to you and you said to me that this is what would happen, but I carefully examined the language and I see a deficiency. I would like to see some of the wording that was contained in the RRRRA if we are going to maintain the word "alleged."

I believe Mrs Poole's approach would work, and therefore it enhances section 109 because it says there must be "reasonable and probable grounds." I am not challenging the right to proceed where there is not compliance or where it is alleged that there has not been. I simply want to make sure the language is that we do not proceed unless there is a proper investigation.

**Hon Ms Gigantes:** I believe it is the word "proceeding" which implies to the non-legal mind a court proceeding, a police proceeding or a charge proceeding. In this context it means, and has been used to mean in the RRRRA, which we can re-read to you, to begin the activity of finding out whether there might be reasonable and probable grounds. It means to initiate what you would call an investigation, and it means nothing more than that. It does not mean laying a charge. It means beginning to gather, on an allegation, some information which can lead to the decision about what shall take place under the terms of the legislation.

I think it might be helpful if we provided Mr Jackson right now with a copy of the RRRRA, but it does say, Mr Jackson, "commence or cause to be commenced proceedings in respect of the alleged failure to comply." It says, "investigate cases of alleged failure to comply...and, where the circumstances warrant, commence or cause to



be commenced proceedings in respect of the alleged failure to comply."

**Mr Jackson:** My limited legal brain tells me, Minister, by having investigation and then the concept of proceedings, that the two are separate in the original RRRRA. I am simply saying I cannot understand your objection to having the concept of the investigation—

**Hon Ms Gigantes:** We do not have any objection to the concept of the investigation. What we do have objection to is the proposal, through this amendment, that reasonable and probable grounds must be established before an investigation can commence.

Mr Jackson, as a practical matter of course, what happens is that either a tenant or a landlord can call the local ministry office and say, "On this and that matter, I believe this and that to be the case." This may be an allegation that there has not been compliance with the legislation. In such a case, the ministry needs authority to commence to find out whether this allegation will generate reasonable and probable grounds to think there has been non-compliance.

It may be that the wording does not convey that properly, but certainly that process is entirely different from what is being suggested by the proposed amendment, which suggests that no activity can take place on any matter until somehow, spontaneously, *deus ex machina*, the minister has reasonable and probable grounds to believe there has been a non-compliance.

**Mr Jackson:** I simply asked if we could clarify that to commence an investigation or proceedings in respect of an alleged failure—I am comfortable that we have the concept of an investigation in the old legislation. We are silent on the word "investigation" in this legislation. "Proceedings" is not as clear, and if the draftspersons in the previous legislation felt "investigation"—I am not challenging what the minister is telling me. I will just go back to what I have been asking for the third time: that we somehow get across the concept of an investigation that will be undertaken. That would satisfy my needs.

**Hon Ms Gigantes:** Mr Chair, could I ask Colleen to speak to that matter too? I think we are dealing with a different approach in the drafting structure here which may, if we discuss it, help clear up the questions around this particular clause.

**Ms Parrish:** Under the RRRRA all the powers were vested in the minister and then the minister delegated. Under this statute, certain powers are vested in the minister and certain are vested directly in the director or registrar. For example, subsection 110(3) is where you get this investigation. So it is all here, it is just in different places. It is the same concept as it was in the old subsection 11(b). It is just divided in two places.

**Mr Jackson:** The minister directs the director?

**Ms Parrish:** No, the director has the duty under the statute to investigate. The minister does not investigate. The minister may be commencing or causing to commence proceedings, which might be proceedings in the courts, proceedings under the statute, or a prosecution. If there is a prosecution, of course you must have reasonable and

probable grounds to lay an information, because that is what is required by the Provincial Offences Act.

**Mr Jackson:** You would have been better off not to respond. What you have just said to me is that section 109 deals with the minister's power to proceed with proceedings, which you just described as court action. I am not challenging that an investigation will occur, I am just listening carefully to what you just said. You just said that the director will do the investigation, not the minister, but now the word "proceeding" in that clause deals with, on the basis of probable grounds—that he will proceed with a court action.

**Hon Ms Gigantes:** No, that is under subsection 110(3).

**Mr Jackson:** That was said to me, but now Ms Parrish just reiterated those points I thought were how I was interpreting section 109. I do not think the minister should proceed with an action unless she has reasonable and probable grounds, and that flows from 110 where the director has done his or her investigation, is that not correct?

**Hon Ms Gigantes:** Let me ask you this, Mr Jackson. Suppose the minister sits in an office and receives a letter, and the letter—

**Mr Jackson:** You are asking me a hypothetical when you will not answer hypotheticals? I will attempt it, but I just wonder.

**The Chair:** Let the minister reply.

**Hon Ms Gigantes:** This is not just hypothetical. This has, in fact, happened in the past. The minister receives a letter or the minister passes somebody on the street who hands the minister a letter—this happened long before we came to government—and the letter says, "I believe that in this rental unit this and that has happened, and it is not in compliance with Bill 121." What does the minister do? The minister has to have some authority under the legislation to do something, and what 109 says is, "The minister can commence or cause to be commenced proceedings in respect of an alleged failure." There is nothing that says the minister shall, without investigation—I read that to say this information shall be received as an allegation and treated as an allegation, and whatever action the minister wishes to take to make sure something is done to respond to this allegation within the framework of the legislation should be done by the minister. The minister should not drop this allegation in a waste-basket. The minister should deal with it.

**Mr Jackson:** No one said that.

1150

**Hon Ms Gigantes:** Okay, but then when we get to section 110 the minister is required to appoint a director, and under subsection 110(3) the director is required to investigate cases of alleged failure.

**Mr Jackson:** Precisely.

**Hon Ms Gigantes:** It is not the minister who is doing the investigation; it is not the minister who is taking the action in whatever proceeding goes on because of the information or the allegation that has been brought to the minister. This is a clause, as I read it and as we tried to have Ms Parrish elucidate it for all our benefit, that causes the minister to respond. It places an obligation on the minister.



Clause (b) places an obligation on the minister to try and provide programs that are going to encourage people to get their benefits and obligations under this act and the Landlord and Tenant Act.

**Mr Jackson:** I still challenge Ms Parrish's statement that reasonable and probable grounds would be required in order to proceed with the case.

**Hon Ms Gigantes:** Do you want the minister to investigate? Do you want to say here, "The minister shall investigate"? That is not what you want.

**Mr Jackson:** No.

**Hon Ms Gigantes:** You want a public servant to investigate.

**Mr Jackson:** What section 109 says simply is that the minister stands in the shoes of the ministry. I understand that. We are dealing with one and the same here, first of all. It is not just a letter passed to you; it is a telephone call to the ministry saying, "I think there's a breach here," and that is an allegation. What it says here is that all these will be investigated, period, end of sentence. They will then be directed to your director, who does not have the test of probable grounds. It simply says he shall investigate all or any cases of alleged failure to comply.

**Hon Ms Gigantes:** That is before—

**Mr Jackson:** Mrs Poole is only indicating that "reasonable and probable grounds" will allow us to overcome the frivolity of it in the event that there is.

**Hon Ms Gigantes:** No. What we get under subsection 110(3), if I might, Mr Chair, is direction to the director about how to treat his or her obligations under the act. It describes the duties. Then we get to the active part of dealing with an allegation, where a reasonable and probable ground has been established—we are at section 114, if I could direct members' attention to that—where there are all kinds of constraints and obligations and evidentiary tests and reasonable and probable requirements for the pursuit of an allegation, in other words, to take action under the legislation which would determine whether there had been compliance or non-compliance. Everything up to section 114 leads to the active section 114, which may be irrelevant, because in a lot of cases the activities which begin when a minister takes responsibility under section 109 and delegates authority under section 110 and so forth may show—

**Mr Jackson:** That is fine. Minister, I am reading section 114, where it says "reasonable and probable grounds" from the justice of the peace. I am satisfied that section is now covered.

**Hon Ms Gigantes:** Yes. In fact, we may not even ever get to section 114. What you are dealing with through those sections is a staged description of the obligations first of the ministry and then of the director and so on.

**Mrs Marland:** Mr Chairman, it is really hard, actually impossible, to understand why the minister is agreeable to "reasonable and probable grounds" being in section 114 and yet she would not support the Liberal amendment to clause 109(a), which is simply asking to use the same words,

albeit I realize very clearly where it is at. But it still makes sense to say "reasonable and probable grounds."

You are the people who are going to have to answer to the people of this province why you think allegations should have enough power and enough justice in them that you would proceed with an allegation. If you think you have the people power to execute and run around after every allegation of a failure to comply with this act, then you obviously are going to need an awful lot more money than \$14 billion in a deficit, because you are setting yourself up to leave this allegation.

The argument Ms Parrish gives us that it is already in the wording in previous acts carries no weight with me. I was not in favour of that act in the first place either, recognizing that it was the Liberal government legislation. I am glad Ms Poole sees the light to make this amendment and improve on the wording of their act. You have an opportunity to clean up something here and improve it. The fact that your argument is, "It's in the RRRA" or "It's in Bill 51," may be your answer and your clarification, but for me it is no argument to continue the farce. It is a farce that an allegation can carry as much weight as it can in section 109.

**Mr Jackson:** I would call the question, Mr Chairman.

**The Chair:** Mr Jackson has asked that the question be now put. All in favour of Mr Jackson's motion to put the question will indicate. Those opposed? The question will now be put.

**Mrs Marland:** A recorded vote, please.

**The Chair:** A recorded vote.

The committee divided on Ms Poole's motion, which was negated on the following vote:

**Ayes—3**

Jackson, Marland, Poole.

**Nays—5**

Abel, Gigantes, Malkowski, Mammoliti, Owens.

**The Chair:** Questions, comments on section 109, as printed?

Interjections.

**The Chair:** I have just been informed that we apparently have a procedural problem, Mr Jackson. The procedural problem is that when you ask that the question now be put, it goes to the original section.

Interjections.

**The Chair:** I guess what I am saying is that we are going to try it again.

**Mr Jackson:** Mr Chairman, Mr Mammoliti used the word "lie." Could I ask this gentleman just exactly what he is referring to?

**Mr Mammoliti:** I said I lied, Mr Chair.

**Mr Jackson:** That I could believe.

**The Chair:** Thank you, Mr Jackson. Could I have unanimous consent and we will take that vote again? I think it was confusing to all members. Certainly it was to the Chair. We will take the vote on section 109 again. Now, to be clear, we are voting on section 109 as printed.



The committee divided on section 109, which was agreed to on the following vote:

**Ayes—5**

Abel, Gigantes, Malkowski, Mammoliti, Owens.

**Nays—3**

Jackson, Marland, Poole.

**Hon Ms Gigantes:** Mr Chair, could I make a tiny comment? I understand the concerns around this process and it is the kind of concern that I very much appreciate. Let me ask members who have worried about this to think of section 109 in these terms. It is passed now, but still, would we want the minister, whoever that minister is, under this legislation to be going around trying to establish reasonable and probable grounds? Is that what we want the Minister of Housing to be doing? I think not. I think we want that to be done by public servants whose function is to carry out this act in a—

**Mr Jackson:** Mr Chairman, is the commentary in order?

**Hon Ms Gigantes:** I hoped it would be helpful.

**Mrs Marland:** Oh, come on.

**The Chair:** Obviously some members of the committee are not feeling it is too helpful.

**Hon Ms Gigantes:** Okay. I apologize, Mr Chair.

**Mr Jackson:** Mr Chairman, I only wish to say to the minister that as I said earlier, in that clause that does not confine it to the minister; this is the ministry as well. That is where the confusion was lying. Let's leave it. The section has been passed.

**Hon Ms Gigantes:** Fine.

**Mr Jackson:** I think the minister would be well advised to leave well enough alone and proceed.

**Hon Ms Gigantes:** I was mistaken in thinking I could be helpful.

**Mr Jackson:** There is enough on the public record on this section. I am anxious to get this bill completed by day's end. Thank you.

**Mrs Marland:** We all understand what it means by "the minister." She is not being very helpful in suggesting that in section 109 the reference to the minister is any different than any other section where it refers to the minister. We know it is the minister's staff.

**The Chair:** Thank you, Mrs Marland. The committee will adjourn and reconvene at 2 o'clock.

The committee recessed at 1203.

## AFTERNOON SITTING

The committee resumed at 1406.

**The Chair:** The standing committee on general government will come to order. I would ask unanimous consent to stand down section 110 until the Liberal critic arrives.

Agreed to.

Section 111:

**The Chair:** Questions, comments on section 111? Shall section 111 carry?

**Mrs Marland:** Section 111 is saying the director has the power, right? "The director has exclusive jurisdiction respecting any matter or thing in respect of which a power, authority or discretion is conferred upon the director." Is the director the superwizard, then?

**Hon Ms Gigantes:** If that question was directed at me, I would have to say that we do not have a definition of wizard or superwizard attached to this legislation, so Ms Marland, who seems to be the expert in this designation, might wish to tell us her opinion.

**Mrs Marland:** In a serious question, then, the director is the person who would have jurisdiction over the rent officer?

**Hon Ms Gigantes:** Yes.

**The Chair:** Shall section 111 carry? Carried.

Section 111 agreed to.

Section 112:

**The Chair:** Questions, comments, amendments to section 112?

**Mrs Marland:** Section 112, which reads, "The director may appoint inspectors for the purposes of this act," leads me to ask the minister if she would agree that, when those inspectors are employed by other, full-time employers, there would be an obligation on the part of the Ministry of Housing to inform the full-time employers that they are using their staff on a part-time basis?

**Hon Ms Gigantes:** Following receipt of very considered advice on this policy question, I think what I will do is say to Mrs Marland that I will take this question seriously under advisement and consider the question of whether we should make a procedural guideline of this nature. I think the issue she raises is one which is important to consider. I will seek further advice on it. It seems quite a reasonable suggestion to me at this point.

**Mrs Marland:** Thank you for the answer, Minister. I think what is important here is that in the letter from Ms Parrish on January 28 that I discussed earlier this week, it does say that the inspector will not be assigned to inspect in the municipality in which he holds a permanent position or in a municipality in which he lives.

But, you see, the problem is—it may not have been a problem in the past, maybe because of the numbers that have been employed, but there are two things here that I think are very significant. One is that these inspectors may be able to do the inspection, as it says in the letter, on weekends or during evening hours or when they are on vacation from their full-time jobs. But if they are called to give evidence at a hearing and the hearing is at a time that

would put them in conflict with their full-time job, then I think you have an obligation to inform their full-time employer that you have contracted them with Ministry of Housing funds paying them to do that job. If they are giving evidence at a hearing away from where they live and where they normally work, it could involve quite a lot of time away from their full-time job.

I think it is terribly important that this whole area is investigated, and I would ask that the minister could report back to the committee with her decision, since the question was raised at this committee, so that we can know what the outcome of this question is since I raised it. I do have a concern about the public purse paying one person in two different areas. There are people in this province who are on retirement pensions from government jobs and they can only receive their full pension if they—there are conditions under which they may violate their full-time pension. One of those conditions is accepting other kinds of work or other employment. Whether it is just or unjust, the fact remains that there are rules for current employees of the government. I do not want to spend any more time on it, but I think this whole question is very relevant and we do need the answer on it. I think I made the point.

**Hon Ms Gigantes:** I would be glad, having given consideration to this question, to report back to the committee.

**Mr Mammoliti:** Sorry, I did not hear what the minister said.

**Hon Ms Gigantes:** I would be glad, once I have given consideration to this question on whether we should have guidelines along the lines suggested by Mrs Marland, to report back to this committee.

**Mr Mammoliti:** If you do not mind, I would just like to give you my view on it for one quick second. To a degree, I would agree in a sense with Mrs Marland, but I do not agree that it should be put into legislation. I think maybe we should be looking in terms of policy and that sort of thing later on if it poses a problem.

**Hon Ms Gigantes:** Precisely. I think that is why Mrs Marland feels that this would be an appropriate action too. The consideration will be whether we should have administrative guidelines which would involve this notification.

**Mrs Marland:** I was not asking for it to be put in the legislation.

**The Chair:** Shall section 112 carry?

Section 112 agreed to.

**The Chair:** We will revert to section 110, subsection 110(1). There is a Liberal motion.

Ms Poole moves that subsection 110(1) of the bill be struck out and the following substituted:

"Director

"(1) The minister shall appoint a person to be the director of rent regulation.

"Idem

"(1.1) The director shall be an employee of the Ministry of Housing."

An explanation, Mrs Poole?



**Ms Poole:** I do have an explanation, as it turns out. The way subsection 110(1) is worded, it says, "The minister shall appoint an employee of the ministry to be the director of rent control." The first and main point to our motion is the fact that an employee of the ministry would have to be in that position before he could be appointed the director of rent control. We believe the ministry should have the prerogative to appoint from outside the ministry if it so desired.

For instance, if somebody was not already an employee of the ministry, he could still be made the director under this section. Furthermore, we have subsection 110(1.1) which would state that the director shall be an employee of the Ministry of Housing. So once the director is appointed, he is an employee of the Ministry of Housing.

**Ms Parrish:** Strictly speaking, from a purely technical viewpoint, I do not actually think your amendment makes any difference. Normally what happens is that when you employ somebody from outside, first of all you employ them under the Public Service Act and then you give them their order in council, appointing them through a statutory provision. On the other hand, there is nothing wrong with your drafting if it gives you a greater sense of confidence or whatever.

Of course, we like the title "director of rent control." This is the Rent Control Act and we do have a rent control system. So on the issue of the employees, the drafting is harmless, although it is not necessary. All this is trying to say is that this should be a civil service position and these people should be appointed under the Public Service Act. There is nothing in the current drafting of section 110 that prevents that. As I said, we like the title "director of rent control."

**Mrs Marland:** On a point of order, Mr Chairman: Ms Parrish said this is the Rent Control Act. It is actually the rent regulation act. That is why the wording in the Liberal motion is actually more correct.

**Ms Parrish:** Section 130 says "The short title of this act is the Rent Control Act, 1991," which I understand will now be 1992.

**Hon Ms Gigantes:** Can I make a suggestion? I understand from what Colleen Parrish has just told us that it would not make any difference in which order we either hired into the public service or designated as director of whatever. That matter does not seem to cause a problem in the amendment. However, the question of the title will be debated, along with other amendments to follow here.

Could I suggest that we go ahead and deal with the substantive issue of what the legislation does and what it is called therefore in section 130, and then revert back to this item. I have no objection to the amendment as long as it is consistent with our decision under section 130 where the government view is known.

**The Chair:** I am a little confused. Are you suggesting we stand this section down or are you suggesting that we reopen it?

**Hon Ms Gigantes:** I am suggesting that we stand it down until we deal with the amendment to section 130, which will then determine how we should be dealing with the title contained in this amendment. I have no objection

if the Liberal critic still wishes to place the amendment as long as we can get the title of the director in this case to be consistent with the decision around section 130.

**The Chair:** We have a request to stand this section down.

**Ms Poole:** I am not sure that section 130 is indeed all that relevant to this particular amendment. The title of the bill is "Bill 121, An Act to revise the Law related to Residential Rent Regulation." What section 130 does is give a short title of the act, and it is the short title we are proposing to amend. If the minister is opposed to section 130 being amended and the short title was still the Rent Control Act, subsection 110(1) could still be the "director of rent regulation" because of the long title of the bill.

**Hon Ms Gigantes:** That is fine. I am prepared to deal with it now.

1420

**The Chair:** I took it from Ms Poole's comments that we did not have unanimous consent.

**Ms Baldwin:** The long title of the act is "An Act to revise the Law related to Residential Rent Regulation," because the present law refers to rent regulation. The short title of the act will be the title of the act once the act is in the statutes. The rest of the bill as it stands now refers to rent control, not rent regulation. So in terms of consistency in the statute, it would be a mistake to have "rent regulation" here and "rent control" everywhere else.

**Ms Poole:** Mr Chair, we will agree to stand down this section.

**The Chair:** Do we have unanimous consent to stand down subsection 110(1)?

Agreed to.

**The Chair:** Subsection 110(2), Mrs Marland.

**Mrs Marland:** I just have one procedural question. Referring back to my question about the stood-down amendments to subsections 20(8) and 22(3), I understand now there has been a suggestion between our staff and ministry staff that we deal with the intent in those stood-down sections that they be dealt with in committee of the whole. I just want to ask if that is the correct understanding of the ministry staff as well.

**Ms Parrish:** We have no dispute as to the policy. We seem to have had some struggle in trying to develop drafting that people find sufficiently clear. There is one thing, though. Although you have raised a very legitimate issue, after discussion with staff, including Ms Dalziel, who has been very helpful to us, we now think the fix is in section 125 and not subsections 20(8) and 22(3).

**Mrs Marland:** You actually clarified that earlier this week when you referred to section 125, but is it now the proposal of the ministry that we deal with it in committee of the whole House?

**Ms Parrish:** Yes, because we have had some difficulty trying to get the drafting done, but we are in agreement on policy.

**Mrs Marland:** And you are in agreement to deal with it in committee of the whole House.



**Ms Parrish:** It is our intention to deal with it in committee of the whole House by introducing an amendment to section 125 that hopefully everyone is satisfied with.

**The Chair:** Just so members understand, we have quite a number of sections that have been stood down. My intention is to go through the bill as it is numbered. We will then go back and start to do the clauses that have been stood down one by one in order. It is just so we have a general agreement about how we are going to do this.

Any questions or comments on subsection 110(2)?

**Mrs Marland:** Where it says, "The director may in writing delegate any power" etc, could the minister tell us what that means? Is that a memo form of writing between the director and that staff person to whom the delegation is directed?

**Hon Ms Gigantes:** What the clause means, as I read it, is that the delegation must occur in writing. It does not specify the form.

**Mrs Marland:** Is the delegation a matter of public record when that takes place?

**Hon Ms Gigantes:** Yes, it would be.

**Mrs Marland:** Thank you, that is the answer.

**The Chair:** Shall subsection 110(2) carry? Carried. Subsection 110(3), Ms Poole.

**Mrs Marland:** Just to reiterate the concern about the wording "investigate cases of alleged failure"—

**The Chair:** Mrs Marland, the Liberals have an amendment to this. Perhaps we could deal with the amendment first.

**Mrs Marland:** Certainly.

**The Chair:** Ms Poole moves that clause 110(3)(a) of the bill be struck out and the following substituted:

"(a) investigate cases where he or she has reasonable grounds to believe a person has failed to comply with this act or an order made under it;"

An explanation, please?

**Ms Poole:** The phrase "reasonable grounds" is very similar to the one which we had in section 109. In that case it dealt with the minister and in this specific case before us right now we are referring to the duties of the director. Again, we feel that if there are going to be situations where there has been an allegation, before proceeding the director should have at least some reasonable grounds to believe that there is a failure to comply. I will not reiterate the arguments that were made under the first section, because we are under some time constraint today and I believe the same comments for section 109 apply to section 110. I hope the minister will reconsider and put a test of reason into this section.

**Hon Ms Gigantes:** If I could, Mr Chair, as we indicated in discussion of section 109, there is a progression of activity which an allegation should generate. We feel that any allegation should create a response. In order to generate a response we would expect those upon whom the responsibility falls to take some action. In this case we have called that action an investigation. This does not imply that any judgement has been made on the allegation; it is simply an

initiation of activity in response to the allegation. We want each allegation to generate a response. This is how we get the generation of a response under way.

When we get to section 114, we will find all the tests of a due process, reasonability and probability that we expect and desire in movement beyond investigation into activity that indicates we think there in fact may have been a failure to comply. But this is at the very preliminary stage. We do not want the director, at this stage, to have to establish reasonable or probable grounds, either one. It is the duty of the director to investigate under section 110.

**Ms Poole:** I have a question for the minister: What happens in cases where an investigation has been caused and it is ascertained by the inspector that there are no reasonable grounds for proceeding? What happens to the records in that regard?

I am somewhat concerned that in the case of an allegation where you are causing an investigation, even though it proves to be ungrounded, at some later date somebody will use that against the party in question and say, "On three occasions the Ministry of Housing has had to send inspectors to the premises," which makes it sound as though this person in fact were guilty of something. But if the allegation were groundless or, what is worse, frivolous or vexatious, simply to cause grief to a certain party, whether it be for a grudge or because somebody is a little unbalanced or for whatever reason, I am concerned that these records would be there and could be used by some party against him when in fact there has been no wrongdoing and no grounds for any investigation or actions to be taken against that party.

**Hon Ms Gigantes:** I am sure that members of the committee will be familiar with the provisions of the freedom of information and protection of privacy legislation. I certainly have become exceedingly clear in my own mind about provisions of this kind because of my own unfortunate entanglement around matters that were governed by protection of privacy. The protection of the parties in any such situation would come from freedom of information and protection of privacy.

1430

**Ms Poole:** Although I certainly agree with the minister that there is that protection from the ministry's side, it was the minister herself who mentioned the other day that tenants in the building would be most likely to know if there were an inspection, and I said yes, that is sometimes true and sometimes not true. But even the tenants' awareness of four or five inspections in a row might lead people to use that information when there was no substantiation for the inspector to go out to begin with.

**Hon Ms Gigantes:** I would put it to the member that, first, allegations which generated four or five inspections without a base would be unlikely, because once a director has been asked to send out an inspector and the allegation has been shown to be without base and the director has therefore made a decision not to use subsequent sections in the legislation in order to enforce compliance, then the inspector would not look warmly upon future allegations. That one can expect.



Second, if we had four or five allegations without base I think the provisions dealing with vexatious—what is it we call it?—and frivolous allegations would apply. So I do think there are those practical and legal protections around the concerns she is raising here.

**Ms Poole:** Just for a point of clarification, I am of course aware of the section regarding applications which deal with “frivolous and vexatious.” Is there some section that would also deal with allegations that are frivolous and vexatious causing taxpayers’ moneys to be spent?

**Ms Parrish:** I think if you read the section it says that you must “investigate cases of alleged failure.” There is nothing in this section that says you must send out an investigator in every case. Clearly these are matters of discretion. People who enforce statutes have to exercise that discretion and sometimes it is difficult. If you get a very wild and unlikely allegation, the investigation may simply be a phone call to inquire and nothing further may happen. There is no requirement in this section to send out an investigator.

Bear in mind that there are provisions when you do send out an investigator, for example, because these are people’s homes, that if you want to enter the premises without consent, you require a warrant. So you would have to have reasonable and probable grounds. You would have to swear it before a justice of the peace before you effected entry. It is not likely that you would have a lot of investigators running around without any good reason.

These are matters of discretion. There are usually procedures that people have to ensure (a) that they are fulfilling their obligation to investigate real issues that may be coming out and not ignoring people simply because perhaps they are not very articulate or their English is not good, but are really looking at real issues; (b) that they are not, on the other hand, abusing their authority and causing undue embarrassment and anguish to people who have done nothing wrong.

**Hon Ms Gigantes:** If I could add to that, if the member looks at section 124, while we do not use the “vexatious and frivolous” terminology, certainly there is an understanding out of 124, in my mind, that a director who is dealing with a person consistently making allegations which are baseless might well be lectured about the potential use of section 124.

**Mrs Marland:** I want to place on the record what I started to say before the amendment was placed. I do support it, for the same reasons and concerns that I had in section 109.

**The Chair:** Thank you, Mrs Marland. Shall Mrs Poole’s amendment to clause 110(3)(a) carry? All in favour? Opposed?

Motion negatived.

**The Chair:** Now to subsection 110(3): Questions or comments?

**Mrs Marland:** Clause 110(3)(c) is “ensure that prescribed maintenance standards are being complied with.” As this is stated as a responsibility of the director, could the minister tell us what the prescribed maintenance standards are or will be?

**Hon Ms Gigantes:** I will ask Colleen Parrish to provide us with full information here.

**Ms Parrish:** There is a provincial maintenance standard which is now prescribed under the RRRA. We expect that initially, in any event, it will be very similar to that. The standards board has recently reviewed the standard and has some minor changes that it is proposing to that standard. I am sure the ministry will be looking at that before it finalizes the standard.

**Mrs Marland:** You are saying these are the maintenance standards as prescribed in the RRRA.

**Ms Parrish:** Similar to them, yes.

**Ms Poole:** I had a question following Mrs Marland’s question. Now that the standards board has been abolished, who in future would review standards and make those changes?

**Ms Parrish:** I think we have had an extensive process of public consultation on this statute. We intend to have consultation on the regulations in future. It is quite likely we will continue to have public consultation on the appropriateness of certain standards, in particular with the Ontario Association of Property Standards Officers, with the Association of Municipalities of Ontario and with other landlord and tenant organizations.

**Hon Ms Gigantes:** The short answer is that the ministry will be responsible.

**Ms Poole:** Of course the standards board is of the ministry as well, and I was wondering what particular part of the ministry. Obviously it is what you would call the rent control branch and what I would call the rent review branch that would have to do this in future since there is no standards board to continue this fine work.

**Hon Ms Gigantes:** That is correct.

**Ms Poole:** Let the record show the minister agrees that there is no longer a standards board to continue its fine work. I am sure the standards board people will be very pleased with that accolade.

**Hon Ms Gigantes:** Let the record show I am laughing.

**The Chair:** Shall subsection 110(3) carry? Carried.

1440

Section 113:

**The Chair:** Questions or comments to subsection 113(1)? Shall subsection 113(1) carry? Carried.

Mrs Poole, you have an amendment to subsections 113(2) through (8)? I am sorry, that is the government amendment, but you have one to 113(2).

**Hon Ms Gigantes:** Where are we at?

**The Chair:** We are at subsection 113(2).

**Hon Ms Gigantes:** Okay, thank you. As printed.

**The Chair:** You do not need to place yours, because it is as printed, I believe. Ms Poole needs to place hers because it is a Liberal motion.

**Mrs Marland:** Which one are we going to speak to first?

**The Chair:** The government one, because it is as printed, is placed in the legislation. She need not move



hers, so Mrs Poole can move hers and we will speak to the amendment first.

Ms Poole moves that subsection 113(2) of the bill be amended by striking out "in the case of an alleged failure to comply with" in the third and fourth lines and substituting "if he or she has reasonable grounds to believe a person has failed to comply with."

**Hon Ms Gigantes:** This is not the right one.

**The Chair:** Is this perhaps the original legislation, Mrs Poole?

**Ms Poole:** You are actually quite right. This was tabled by the Liberal caucus before or at the same time this particular government motion was tabled, so that the words to which our amendment apply have been withdrawn, I believe, and changed in the government amendment.

**The Chair:** So you withdraw your motion?

**Ms Poole:** I would withdraw my amendment, but I did have a question on—

**The Chair:** We will speak to the other clauses.

Mrs Poole has withdrawn her amendment. I see no reason, then, not to deal with the entire remaining section together.

**Mrs Marland:** I have comments on section 113.

**The Chair:** We will certainly permit comments, but we do not have particular amendments to the other subsections, so I think we can deal with it as a full section.

**Mrs Marland:** Subsection 113(2) is one of the worst sections of this bill in terms of the rights of individuals in Ontario today.

**Ms Poole:** On a point of order, Mr Chairman: Mine was not going to be a comment. It was going to ask a question of the ministry because I think this section has undergone some changes since it was originally proposed, and some of the most contentious parts have been changed. I was just going to ask, when it was my turn, if the ministry could review the changes it made so we are perhaps not speaking to what originally was proposed as opposed to what it is now.

**Mrs Marland:** I am speaking to what is printed.

**The Chair:** Thank you, Mrs Poole. Mrs Marland has the floor and you may put those questions when it is—

**Mrs Marland:** Have there been any changes since this was printed?

**Hon Ms Gigantes:** No, but there is, as you will note, quite a revision represented by what is printed.

**The Chair:** Would you prefer an explanation of it?

**Mrs Marland:** No, I would like to deal with what is printed in front of me, because this is what I have concern with. It says in the printed amendment to subsection 113(3) that "An inspector exercising a power for a purpose under subsection (2)"—and maybe in fairness I should read that. Subsection 113(2): "An inspector may exercise any of the powers set out in subsection (3) if he or she does so between the hours of 7 am and 9 pm"—no wonder Mr Mammoliti is yawning, if it was 7 am and they knocked on his door.

**Mr Mammoliti:** I yawned while you spoke.

**The Chair:** Mr Mammoliti.

**Mrs Marland:**—"having first given reasonable prior notice and if the power is being exercised,

"(a) to determine whether this act applies to a residential complex or a rental unit in it;

"(b) to inspect premises to determine whether a landlord has complied with a prescribed maintenance standard;

"(c) to determine whether a residential complex has been adequately maintained;

"(d) to determine whether the work giving rise to a capital expenditure has been completed;

"(e) to determine whether services and facilities have been discontinued or reduced."

Obviously all of these under subsection 113(2), clauses (a) to (e), are self-explanatory, and if the property owner is having some capital work done and consequently has taken on a capital expenditure, it would be fair to make those inspections.

I am wondering, under subsection 113(2), why it is necessary to have such long hours of inspection, from 7 am to 9 pm. That is not a normal business day. Maybe I will let you answer that and then I will go on to subsection 113(3), which is where the questions are that I am very concerned about.

**Ms Parrish:** First of all, in the RRRA, there is no limitation at all on the time in which you can do this, and we felt it was appropriate to put a time in. The reason we chose this, I guess, is simply the fact that we may be responding to a complaint by a tenant who is working and who may wish us to visit in the evening or over the dinner hour or first thing in the morning.

It may be that this complaint or this problem that is occurring is of a time-limited nature. Maybe it is noise or some other problem, some maintenance danger or something which is occurring at certain times of the day. The reason we have time is, first, to restrict periods of inspection—which is not, in theory, a restriction under the current statute—and also to recognize that we are dealing with people who may have full-time jobs during the day. We try to give reasonable service.

**Mrs Marland:** I recognize that, but this does not say Monday to Friday. Is it any day of the week? It does not specify what days.

**Hon Ms Gigantes:** "Having first given reasonable prior notice."

**Mrs Marland:** I understand that, but if I give you reasonable prior notice that I want to come into your place at 7 am on Sunday morning, does that mean that is okay?

**Hon Ms Gigantes:** Well, it might be debated, certainly by me.

**Mrs Marland:** I am asking a serious question, Minister.

**Hon Ms Gigantes:** I am treating it seriously. You do not have to give your consent.

**Mrs Marland:** It does not say that you have to give your consent here.

**Hon Ms Gigantes:** No.

**Mrs Marland:** It says, "having first given reasonable prior notice." It does not say, "and consent having been



granted." So if you give me reasonable prior notice that you want to come in other than reasonable business hours in a work week—

1450

**Hon Ms Gigantes:** If consent were not granted, other procedures would perhaps be necessary.

**Mrs Marland:** Why do we not be a little more reasonable here and specify either reasonable business hours or a six-day week or something? I think 7 am to 9 pm any day of the week, which is what it says, is unreasonable because it is wide open.

**Hon Ms Gigantes:** But if you as the inspector got in touch with me and said that you were coming at 7 am on Sunday morning and I said, "No way, José," then you as the inspector would say, "I could make myself available another time and we could discuss that." Then if you were trying to please me and gain access for my benefit, we would mutually arrange a time. If it were a question of I did not want you in the unit—perhaps I am the landlord and perhaps that would be the case and I did not want you—then in order for you to be able to enter the premises without my having given consent, other processes would be involved.

**Mrs Marland:** This is the document people are going to be going by. They are not going to be able to dig out Hansard and find out what your answer to my question is. I think what we have to deal with is what this says, and what this says is very wide open.

**Hon Ms Gigantes:** Look at subsection 113(8). We are talking about a process which starts off with everybody not at dagger's edge. We are talking about a process where there is a reasonable kind of framework. People discuss what is reasonable within that framework, what is mutually acceptable. Then if there is a problem, we could get to, for example, subsection (8), subsection (9), subsection (10). This all flows. This is not that we all draw pistols as soon as we get to subsection (2), right? There is a progression here which I think is orderly and reasonable and in which there are legal protections appropriate to the different situations.

**Mrs Marland:** It is interesting that you direct me to subsection (8), because it says there "at any time and without giving prior notice."

**Ms Parrish:** Only if there is consent, and if there is no consent you must have a search warrant to enter a dwelling place.

**Mrs Marland:** What I am suggesting is that to have it 7 am to 9 pm, seven days a week, which is the only way subsection 113(2) can be read, seems ridiculous to me. If you are saying "given reasonable prior notice and consent is received," then say it. It does not say that either here.

**Hon Ms Gigantes:** What we do is assume everything is reasonable until, as the subsequent subsections describe them, difficulties arise. We assume that things are going to go well unless there are difficulties. We begin to contemplate those difficulties in the later subsections of section 113, and I think if they are read as a whole they will provide the securities of process Ms Marland is quite reasonably asking for.

I also bring to the attention of committee members that Colleen Parrish has reminded me that the Provincial Offences Act calls for entry of this kind to fall between 6 am and 9 pm.

**Mrs Marland:** At this point we are not talking about provincial offences, are we?

**Hon Ms Gigantes:** No, but I am comparing the hours which you find difficult to contemplate. It may be, for the benefit of all parties, wonderful to think about 7:30, for example, in the morning or 8:30 at night. Everybody may be very happy about this. This legislation permits it and encourages discussion within those hours.

**Mrs Marland:** I am more concerned about the fact that it does not specify days. If it is Monday to Friday, I can see why it has to be 7 until 9, if people are working, but it does not have anything to do with days. I care about the intrusion, for any reason, on the tenants who, if they are given what is called reasonable notice—this act says 7 until 9, seven days a week—are obviously not in a position to know they can argue against that.

Under subsection 113(3) we get into some really grave rights of this inspector. It says here:

"An inspector exercising a power for a purpose under subsection (2)"—the section I have just read, as a matter of fact—"may,

"(a) enter any place;

"(b) require the production of and inspect any records or other things that may be relevant to the inspection;

"(c) inquire into any matters that may be relevant to the inspection; and

"(d) take any photographs that may be relevant to the inspection."

This is search and seizure. That is what this is about. Although I understand that the provisions in this section are similar to those in Bill 51, as far as I am concerned, that does not make them any more acceptable. In fact, they extend Bill 51's powers beyond the investigating of compliance with maintenance standards and orders only. As well, under Bill 51 the powers of entry, search and seizure were limited to the consent of the landlord or landlord employee. Unless the consent was given, the inspector was limited to an external visual inspection only. There was no mechanism to enforce entry.

**Hon Ms Gigantes:** Mr Chair, I wonder if I could ask if Colleen Parrish could help us with an understanding on this question of comparison.

**Ms Parrish:** Under the RRRA the powers were actually wider than they are under this statute and less defined. If they could not get consent, they would get a warrant under the Provincial Offences Act. What we have done is take the search warrant provisions and put them directly into this statute, for two reasons. One is to make them all work together and the other is to deal with one technical problem.

Under the Provincial Offences Act you can always search and seize. The problem you have is that when you are inspecting for a provincial standard, what you may be inspecting for is the fact that there is no heat or water pressure, and you cannot seize those things. What we wanted to do was clarify that you could get a search warrant to



inspect a condition, such as cockroach infestation, no heat or no water pressure. Otherwise they would obtain a warrant under the Provincial Offences Act. We have simply brought forward those warrant provisions. In fact, in a number of respects this system is somewhat more constrained than the powers under the RRRA, because the case law has evolved over the last few years in the area of provincial search-and-seizure powers.

**Mrs Marland:** Section 114 deals with search warrants. We are dealing with section 113, which gives all this power to an inspector without a search warrant.

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**Hon Ms Gigantes:** I draw the member's attention to subsections 113(8), (9) and (10), particularly (9): "without the occupier's consent the inspector is not permitted to exercise that power without the authority of a search warrant." We then go on, in section 114, to lay out the further process which must be followed where there is not consent and where a search warrant, as required under section 113 in certain extreme circumstances, would be required.

They all relate and interrelate. They are ascending powers reflecting the ascending possibilities of difficulty around a particular inspection. Section 113 and the constraints under it relate directly to portions of section 114 which prescribe the exact kinds of mechanisms and processes to be used where there is a complete breakdown of communication and agreement about what shall happen.

**Mrs Marland:** All this can happen to a property owner on the basis of an allegation, on the basis of an alleged non-compliance with this act. All of this starts rolling into motion and this train starts going down the track. In the other sections we tried to get a better word than "alleged." We said "with reasonable and probable grounds," which you would not accept, so we are back to allegations. On the basis of allegations, you can go into anybody's place at any time and seize anything—that is what this says—albeit, as you have now explained, with a search warrant, but the fact is that on the basis of an allegation you have this much power. You can go into any place of business or property, you can go into any residence, you can go to any location.

**Mr Owens:** I just want to know, for the edification of myself and perhaps other members, the process one has to go through in order to obtain a search warrant. They do not just hand those things out like candy, I understand.

**Mrs Marland:** We all know how you get a search warrant. You take information to a justice of the peace.

**Mr Owens:** At 7 o'clock in the morning, where are you going to find one?

**Mr Jackson:** You will not find one in Halton, because they have been removed, but you will find one in Toronto. They are available.

**Mrs Marland:** Excuse me, a justice of the peace is always available, 24 hours a day. How else do the police execute their warrants?

**Mr Owens:** But you also have to provide evidence.

**Mrs Marland:** I am telling you that justices of the peace do not limit their hours of availability to business

hours. Whatever it is that the police need a justice of the peace for, they can get one 24 hours a day. The way this Ministry of Housing police is going, it will be just—of course the availability of a JP is not the problem.

I understand that under Bill 51 the inspection of documents was also limited to documents on the public record unless the landlord gave permission to examine documents in his office or elsewhere. Is that so?

**Ms Parrish:** No, it is not so. Under the RRRA, as under this statute, there was the ability to have a search warrant. The rule for a search warrant, which is set out in section 114, is that you must go before a justice of the peace who must be satisfied by information under oath that there are reasonable and probable grounds to believe that there is an offence and that exercising the powers under the search warrant, or the search-and-seizure warrant, will afford evidence as to the commission of the offence.

That is the same under Bill 51, except that those provisions were in the Provincial Offences Act and incorporated into that statute by reference. We have incorporated these provisions directly into this statute in order to make a distinction between a warrant which will give you the right to search and seize and a warrant which will give you only the right to search.

**Mrs Marland:** So you are saying that under Bill 51 the inspection of documents was not limited?

**Ms Parrish:** If you are prepared to get a search warrant. There are cases when you are not prepared to do so because you do not have reasonable and probable grounds which you are prepared to give under oath.

**Mrs Marland:** Under Bill 51? That is your answer?

**Ms Parrish:** That is correct, under the Provincial Offences Act, if you are willing to give that oath. It is often the case that there are practical limitations to looking at documents because staff are not in the situation where they can say under oath that they have reasonable and probable grounds to believe that an offence was committed. In such cases, as in the current act, they may have some restrictions.

**Mrs Marland:** With the authorization of a search warrant in this bill we are really going to allow inspectors to enter landlords' premises to do all of these things, remove records or other things that may be relevant to the inspection. Do you not think that clearly illustrates, in the opinion of your Ontario socialist government, that landlords are really going to be treated like criminals? Is the assumption there that this kind of power is necessary? I am not asking Ms Parrish that. I am asking the minister that.

**Hon Ms Gigantes:** No, Mrs Marland, I do not agree with you on that point. The situations which will call forth to the limit the processes described in sections 113 and 114 will be rare; they have been in the past under Bill 51, and they will continue to be in the future. We know that. We want to make sure that when those very rare cases arise, all due processes, as spelled out in the interconnected sections of sections 113 and 114, are there to protect all parties. That includes the landlord.

Certainly I do not contemplate a situation either where there will be many requests of justices of the peace under



section 114 to provide a search warrant along the lines described in these sections. Nor do I contemplate that justices of the peace in Ontario would cavalierly or without due consideration grant search warrants in such cases. I think that justices of the peace will take into account the very matters you are raising, and will look very carefully at the grounds being presented when the application for the search warrant is made, to suspect that there are reasonable and probable grounds that the act is being disregarded and compliance is not taking place.

**Mrs Marland:** With this bill the government is making the landlord's actions, such as failing to obey a work order, failure to file a statement of rent information within the time required, no matter what kind of reasonable, valid reason there might be for that, or interfering with a tenant's right to organize, or increasing or attempting to increase rent charged in contravention of the act—it makes all these things, with the kind of power that sections 113 and 114 describe, criminal offences far beyond their significance.

**Hon Ms Gigantes:** Oh, no, those matters you have raised are not criminal offences under this act. They certainly are, in some cases, matters which would cause the administration of the rent review to prevent rent increases, perhaps to even lower the level of rent, but we are not talking, in the majority of the items you have talked about, Mrs Marland, of anything that carries criminal—

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**Mrs Marland:** Okay. If they are not criminal offences, then why are we giving these kinds of powers under sections 113 and 114 that are the same powers as the police use? When the police want to go after a criminal who may or may not have committed a criminal offence, they have the power to get a search warrant. What we are asking is, are these violations so significant that you have to have the same powers as the police in treating potential criminals, especially as we know now from the previous sections that they may only be allegations?

You can go all through sections 113 and 114 and you pass on this information to the poor justice of the peace and say: "Look, this landlord is potentially violating all of these things. He may have violated a work order. He is not giving us some information that we need, and we need the power to go wherever he is and take whatever he has." I mean, this is incredible for 1992 in Ontario. It is unbelievable that that much power is going to happen as a result of this bill.

The other aspect I think is interesting is that where section 113 defines the powers of these inspectors I have just been speaking about, the power accorded to these individuals is considerable and could be very well abused if the inspectors do not have the proper training and/or are biased. Now, about these inspectors, are you going to give your part-time, weekend evening inspectors whom you second from other full-time jobs paid by taxpayers the same power as well? How do you know what kind of training those people will have if they are part-time employees and full-time employees of other government bodies like municipalities? How can you be sure that these powers under section 113, and then subsequently through a search warrant under section 114, are not going to be abused?

**Hon Ms Gigantes:** Mr Chair, if I might. The people who would be called upon to perform the role of inspector and to whom sections 113 and 114 would apply are people who are quite used to operating within a legal framework very much of the nature described here.

It is the case that municipal inspectors are operating with very much the same kinds of rules and regulations. In some cases the municipal acts through which they would be carrying out their full-time duties will have even greater powers than those described here. They will be people who will be quite used to doing most of their work without ever having to move, for example, to the level of subsection 113(8). It will be in the very rare circumstance in their normal work that they would use powers following from subsections 113(8), 113(9), 113(10) and then being disciplined within those powers by the subsections in section 114.

I would also, if I could, Mr Chair, in terms of understanding and having a sense of perspective about what we are talking about here, ask Colleen Parrish if she could give us her appreciation of how sections 113 and 114 would compare with legislation which the people we will be calling upon to act as inspectors are quite familiar with.

**Ms Parrish:** The municipal inspectors who are making inspections under the Planning Act or the Municipal Act or the corporate act, if they have a Corporate act—the city of Toronto has its own statute—when they exercise their powers and prosecute for maintenance standards under their authority they use the Provincial Offences Act. So they use the same sort of approach as we do.

Our powers are actually more circumscribed and more defined. The only real difference is, as I said, this distinction that we have had to make between search and just looking, and search and seizure. But these are the same authorities that are vested under the Provincial Offences Act, and apply to either statute. People who do this do receive training and will continue to receive training in the future as to the appropriate techniques of investigation, that are not inappropriately intrusive and that obey the law of Ontario and are not challengeable under the charter or any other way.

**Hon Ms Gigantes:** Mr Chair, if I could also add to that. Mrs Marland was concerned that inspectors using powers under section 113 could take anything, could seize anything, and so on. In fact, if we look at subsection 113(3) and see what the inspector may take or inspect, we are talking always, in each subsection, of items or things or facts relevant to the inspection. If they are relevant to the inspection, then the inspector is required to give a receipt for any records or things which are being taken and under subsection 113(5), the inspector is obligated to promptly return any such records or things, unless they are being held as evidence obviously, therefore related directly to the purpose of the inspection, and also subject to the limitation that they have to be returned, unless copies cannot be made.

So I think that what we are talking about here is a much more—what can I say?—civilized process than one Mrs Marland apparently fears. I do believe there has been a great deal of attention and thought given to spelling out as precisely as possible the staged level involved in an easy inspection as opposed to a difficult inspection, the



powers related to each of the stages and, finally, the requirement that when there is no consent given that there are very strict procedures involved in getting a search warrant, which again are limited under section 114 as to time. You cannot even use the search warrant unless you are using it between 7 am and 9 pm.

This is a fairly elaborate—actually, I will take back the word “fairly”—it is an elaborate and I think fair description of a process which I think Mrs Marland will find, in its application, as this legislation is implemented and administered throughout the province, will be used with minimum harshness.

A lot of thought has been given to this section, and I really think that no more powers are being proposed than are absolutely minimum for each and every potential level of difficulty involved in an inspection. In the end, we have to decide whether we want to be able to make a determination through an inspection of whether materials exist, situations exist, circumstances exist which are relative to a non-compliance situation under the bill. If we are going to have inspectors to help us make sure the bill is being implemented as all of us would wish it to be, ie, effectively, then we need a carefully graded, carefully graduated system of powers which can be provided to those inspectors. At each step, those powers are constrained within this bill, which I feel is more useful to those people who will be involved in its application than looking at Bill 51 and being told to go to the Provincial Offences Act to understand what the processes should be.

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**Mrs Marland:** I just find this whole section quite depressing. For the most part, landlords are business people who make an investment and through the investment of their personal funds provide housing for people. For the most part, landlords are good people. For the most part, ministers and members of parliament are good people. No question, there are always exceptions, but for the most part that is the case.

Yet here we have a piece of legislation that is so powerful that it presupposes that this kind of power is necessary. Even if some poor little soul—and to tell you the truth, when I am talking about the landlords, the property owners, I am not envisioning the large corporations. I am envisioning the 140,000 small landlords in this province who own less-than-seven-unit buildings. That is the person I am picturing when I picture the person I am most concerned about, because it is that little landlord who cannot afford the high-priced lawyers to interpret this enormous act. That is the little guy who, on the basis of an allegation by one of his tenants, may be launched into this whole process.

It may well be that little guy who even grants permission. Maybe he says, “Sure, come in,” and does not understand what powers the inspector is exercising. He does not understand any of that stuff. But on that basis, they are even given permission to come into his home, his office, his place of business, any premises. This act says in effect, “Enter any place and take anything.”

The minister has just said, “relevant to the inspection,” and who do you think makes that judgement? Only the

inspector. The inspector makes the judgement when he goes in this man's little basement office or his den and starts rummaging through his desk looking for stuff, like the state police.

**Mr Mammoliti:** On a point of order, Mr Chair: Are we becoming a little repetitive here? I think we are, and if so, I would ask you to rule.

**The Chair:** Mrs Marland has taken a significant amount of time on what I think she believes to be a significant and important point. I am sure she is concluding her remarks within the next while.

**Mrs Marland:** I am gravely concerned about this section and that is why I am spending the time on it. When that inspector, in his opinion, starts to look for any records or other things and take photographs or—I mean, there is not anything that he cannot do “relevant to the inspection.” When you know it is the inspector who is doing this, that it is in his judgement whether it is relevant to the inspection, what if he goes through this man's desk for four or five hours and does not find anything and there is nothing there that is “relevant to the inspection”? That, I suggest, is against that man's basic rights, and I really wonder how these two sections sit as far as the Charter of Rights and Freedoms is concerned.

This person is not a criminal. He has not been found guilty. He has not even been charged. That is the interesting point. Something has been alleged, and on the basis of an allegation all of this stuff can happen to him or to her, and on that basis of allegation, not on the basis of a charge, all of this flows into place. It is totally wrong to treat property owners in this way, and I think it is like going into the Third World War.

Who are against these people, who are simply businessmen and women in this province? I do not think the action fits the problem that has been alleged. If it does, then what we are looking at is something where there is more than an allegation, and I think it is an indignity to the property owners that these inspectors, based on their own judgement, have all this power.

**The Chair:** Mrs Poole?

**Ms Poole:** The reason I was going to suggest that the ministry give a précis of the changes made from the act as originally printed is that there were a number of concerns expressed about the original sections.

One concern was the fact that it did not spell out exactly what the powers of the inspectors were, so there was concern that they would go beyond what they were mandated to do. The government has dealt with that in this section.

The second concern that was expressed was the fact that it did not state in the legislation that only documents relevant to the inspection could be seized and inspected, so there was concern about people's diaries and things like that. I think that has been rectified by the government in this section.

Third, there was a concern that when documents were seized that the owner's interests would be prejudiced because he could not have access to the documents and carry on his business, so they have provided accessibility to the



documents, and as soon as the minister is finished with the documents then they are to be returned to the owner.

The fourth area which was given as an area of concern was whether it was clear that the consent of the occupier of a dwelling place would have to be obtained before search and seizure. That has been clarified.

The fifth one was that the occupier be given the right to refuse consent and be given notice that they have this right. That is included.

The final one was that tenants have complained that the inspector could not have access to the common areas because that was not included. This has been clarified.

The only area I am still not completely satisfied with is the fact that landlords do not have the same rights as the occupier of a dwelling place as far as having to give their consent to certain hours or else there has to be a search warrant, but I must say that substantially many of the concerns I had with the original section have been answered by the ministry in a fairly sensitive way. Mrs Marland has spoken quite eloquently about her concerns with the section. Mr Chair, I am concerned if we continue to debate this matter much longer that we will not be able to complete the bill today, so I will end my comments at that.

1530

The committee divided on whether section 113 should stand as part of the bill as reprinted, which was agreed to on the following vote:

**Ayes—7**

Abel, Gigantes, Lessard, Mammoliti, Morin, Owens, Poole.

**Nays—2**

Jackson, Marland.

Section 114, as amended, agreed to.

Section 115 agreed to.

**The Chair:** Ms Poole, you have a motion for section 115.1.

**Ms Poole:** Yes, Mr Chairman. I would like to say just before we place the amendment that although we did give debate to the standards board issue, I did not previously place a motion in that regard, therefore it was not officially on the record. I do not intend to debate this section, but I am going to put section 115.1 on the record and ask for a recorded vote.

**The Chair:** Ms Poole moves that the bill be amended by adding the following section:

"115.1(1) The Residential Rental Standards Board is continued under the name Residential Rental Standards Board in English and Conseil des normes de location résidentielle in French."

The committee divided on Ms Poole's motion, which was negated on the following vote:

**Ayes—4**

Jackson, Marland, Morin, Poole.

**Nays—6**

Abel, Gigantes, Lessard, Mammoliti, Martin, Owens.

**The Chair:** We have already done section 116.

Sections 117 to 119, inclusive, agreed to.

**The Chair:** Sections 119.1 to 119.14. Ms Poole.

**Ms Poole:** Since we did have a motion concerning the rent appeals board yesterday, which failed, I regretfully am withdrawing this amendment.

**The Chair:** You are not placing it, in other words.

**Ms Poole:** That would be correct.

Section 120:

**The Chair:** Questions or comments to section 120?

**Mrs Marland:** I would like to know what is meant by "the right to organize." Does that mean anywhere on the private property of the property owner? It just says "the right to organize or participate in an organization." It does not talk about location, so would they have the right to organize on private property?

**Mr Jackson:** Other than the residence.

**Hon Ms Gigantes:** Mr Chair, this section does not speak to locale. All property rights that exist would continue. The right of a group of tenants to get together in the apartment of one of the tenants, which of course is not the tenant's apartment but rented from the landlord, would exist. Any of the rights of the landlords to property which was—do you know what I am going to do? I am going to confess that I do not know how to answer this properly and ask Colleen Parrish if she could apply her mind to it.

**Ms Parrish:** There is nothing on this that would require, for example, that a landlord would have to have tenant organizing meetings in his home. All it is saying here is that if it is the private property of the landlord, then it is still the private property of the landlord. This does not overcome the normal rules around property, trespassing and so on. However, it may very well be that the party room in a residential building is not the private property of the landlord because the tenants are entitled to have access to that area under their lease. The landlord could not, for example, prohibit tenants from having an organizing meeting in the party room as long as they met all the usual rules, whatever their rules are for using the party room. However, there is certainly nothing in here that would require the landlord to entertain tenants in his own home or in his private areas.

**Hon Ms Gigantes:** That is so helpful. Thank you.

**The Chair:** Further questions or comments to section 120?

Section 120 agreed to.

Section 121 agreed to.

1540

Section 122:

**The Chair:** Questions or comments to section 122? Mr Jackson.

**Mr Jackson:** Very briefly, is there a current set of rules guiding rent officers in this area? I know there are varying applications of this kind of clause in terms of who has access to material and at what cost. Is there a standard? It is a general question: Is there a standard for this across the province that if I want the whole order I have to pay 10

cents a sheet, or do we charge a basic \$10 if you are a tenant and \$50 if you are the landlord? It is just a general question, because I have been able to acquire them free and I have had to pay.

**Ms Parrish:** If you prescribe fees in Ontario you are required to go through a cabinet committee—it used to be Management Board; I believe it is now treasury board—and there are internal procedures that relate to how fees are set. The basic rule is cost recovery. We do not do this to make a profit. It is basically to recover the costs. When you come forward you are required to just say how much staff time and blah blah.

The general rule is that unless there is a specific provision in your statute that allows you to charge differential fees, you cannot do so. I think there are provisions in some statutes that allow you to waive fees, but I do not believe we have that in our statute.

**Mr Jackson:** Just very quickly here, I understand the intent of this is that they may charge fees.

**Ms Parrish:** If they are prescribed by regulation; only if we have a regulation.

**Mr Jackson:** Yes, and they will be. I just want to know if it is the minister's intention to prescribe those uniformly or if are they going to be discretionary.

**Hon Ms Gigantes:** Oh, dear, I do not know, because I do not know if that would depend on the cost of production in any given centre. I will have to check into that.

**Mr Jackson:** I just hope we are applying it evenly. That is my only point.

**Hon Ms Gigantes:** It certainly would be my intent to try to make sure that it is as evenly applied as possible and that the price to the people who would like to get copies will be as low as possible.

**The Chair:** Further questions or comments on section 122? Shall section 122 carry?

Section 122 agreed to.

Section 123 agreed to.

Section 124:

**The Chair:** We have a government amendment.

Ms Gigantes moves that subsection 124(1) of the bill, as reprinted to show the amendments proposed by the minister, be amended by adding the following clause:

“(b.1) charges or collects or attempts to charge or collect rent in contravention of section 19.”

**The Chair:** An explanation, minister?

**Hon Ms Gigantes:** Yes, Mr Chair. Section 19 is the section which directs us to the maximum legal rent. This amendment will change because section 19 prohibits the landlord from collecting rent that exceeds the guideline until an order has been made.

Under Bill 51 and the way we had originally drafted Bill 121, it was possible for a landlord, without insisting on charging the new rent which he or she was proposing, to collect it and still be more or less assumed to be in compliance with the legislation. We are saying now that landlords may not collect the proposed rent until that proposed rent has been approved by an order.

**The Chair:** Further questions, comments or amendments to clause 124(1)(b.1)? Shall Ms Gigantes's amendment to subsection 124(1) carry? Carried.

Motion agreed to.

**The Chair:** Shall section 124, as amended, carry?

Section 124, as amended, agreed to.

Section 125:

**The Chair:** Questions, comments or amendments to section 125?

**Hon Ms Gigantes:** I am afraid so, Mr Chair.

**Mr Jackson:** They scare you too, do they?

**The Chair:** Ms Gigantes moves that subsection 125(1) of the bill, as reprinted to show the amendments proposed by the minister, be amended by adding the following paragraph:

“3.2 providing that under certain circumstances an amount other than the rent actually charged shall be used in the place of the rent actually charged for the purposes of subsections 10(7) and (9) and paragraph 5 of subsection 97(1), prescribing those circumstances and prescribing rules for determining that amount.”

**Hon Ms Gigantes:** The reason for this amendment is that it is a regulation-making authority, so we can calculate the maximum rent based on factors other than the rent which is actually being charged for the purposes of subsections 10(7) and (9) and paragraph 5 of subsection 97(1). I am going to call upon Colleen Parrish to help us with this one, because it is not one I am prepared to try to explain in English.

**Ms Parrish:** The reason you need this regulation-making authority is largely to deal with very unusual kinds of cases, for example, where you have something that used to be a suites hotel and then you have to say: “What was the actual rent? Was it the monthly rent, the weekly rent, the daily rent?” At various stages they may have done all these things. When you bring in the building you may have this very sort of odd rental history. It is to deal with these very unusual, anomalous situations and devise other rules for those rare occasions where this does happen.

**The Acting Chair (Mr Morin):** Shall Ms Gigantes's motion carry?

Motion agreed to.

Section 125, as amended, agreed to.

**Ms Poole:** The Liberals have an amendment to paragraph 125(1)6.1. I have just been checking the reference for this. It appears that it refers to the energy conservation amendment we had proposed earlier and which was defeated, so I will withdraw paragraph 125(1)6.1. I am not withdrawing it; I am not placing it.

1550

Sections 126 to 129, inclusive, agreed to.

Section 130:

**The Acting Chair (Mr Morin):** Questions or comments on section 130?

Ms Poole moves that section 130 of the bill be struck out and the following substituted:



"130. The short title of this act is the Rent Review Act, 1991."

Do you have any comments?

**Ms Poole:** Although this amendment speaks for itself, I am not going to let it; I would like to speak to it as well. It has become obvious from the wording of this what our intent is. This is not a rent control act; this is a very complex, convoluted, difficult-to-understand piece of legislation which puts more bureaucracy in place, which tenants and landlords are going to have even more difficulty understanding and which certainly is not rent control. In order to name it rent control, what has this government done? This government has removed some sections on economic and financial loss, put on a cap and then says it is rent control.

Any time you have a system where a landlord has an ability to go to the government body for increases above a set guideline amount in several different categories, and when a government body is responsible for reviewing and approving those increases, then it has to be rent review. What this government promised in the election was one rent increase per year geared to inflation and nothing else, no extra bonuses to landlords for capital or financing. I even have the words memorized by now. That was the rent control promise by this government and that is not what this legislation delivered.

The tenants of this province were deluded into thinking they would get rent control as promised by the government. They failed to do so. They betrayed the tenants who believed those promises and voted for them in the election on that basis. So, I cannot see how in any way, shape or form this government can claim that it is rent control. Setting a cap, particularly a cap of 9% in this given year, to me does not rent control make. I would urge this government in future, when it is making promises—

**Mr Abel:** The Liberals talk about promises? Give me a break.

**The Acting Chair (Mr Morin):** Order.

**Mr Abel:** I was provoked.

**Ms Poole:** —such as providing a real system of rent control in this province that they also ensure (a) that their promise is workable, and (b) that their promise is balanced and can be put into effect.

Interjections.

**The Acting Chair (Mr Morin):** Order. Everything was going so well for a while. Let's keep it that way.

**Ms Poole:** Mr Chair, it must be Thursday afternoon. The government members just cannot seem to sit still or stay quiet.

Having made those comments—and I am sure Mrs Marland and Mr Jackson might have an addendum to add—I think what they have provided is not what they promised and in fact not what they are selling it as right now. The first statement I will be making to my tenants is, "This is not rent control; this is rent review."

**Mrs Marland:** I do have some comments to make. I must tell you that I am not going to support this amendment, because in fact I use the same arguments for calling

it the Rent Control Act. I think this piece of legislation gives more control to this government than any piece of legislation I have been a party to for hearings and clause-by-clause deliberation in the seven years I have been down here. I have never seen anything as draconian as this legislation. I have never seen anything that represented the "taking the elephant gun to kill the fly" theory like Bill 121.

It certainly is a piece of legislation that gives the Bob Rae socialist government all kinds of powers, all kinds of controls and unheard-of, intrusive and invasive powers within one individual. We have two people in here who individually have tremendous power: the rent officer and the inspector on whom the rent officer will come to depend when the rent officer does not know enough about a situation to give an informed opinion and has to call in the inspector, paid or otherwise, to make a deliberation.

There are all kinds of control in Bill 121 but there is no protection. Is it not interesting? As far as I am concerned, under this bill neither the interests of the tenants nor the landlords are served, but it sure is a bill that controls their rights. The rights of individuals, whether they own property or rent property in this province, are not enhanced; they are regressed by Bill 121, in my opinion.

**Mr Jackson:** I simply would like to agree with both of the preceding speakers.

**Mr Owens:** You are covering all the bases.

**Mr Jackson:** No, I honestly believe that had the government brought in its initial vision of a single increase once a year, that legitimately could have been classed as rent control. What we do have is a moving off of that position. To my knowledge, those provinces that still have a form of rent regulation shy away from the word "control." I am not familiar if there is a province that actually calls it rent control.

The reason I say that is because all provinces are increasing the number of opportunities for pass-through. The only two provinces that are not, I believe, are maybe Newfoundland—I am not sure—but clearly Ontario is going in that direction. The other provinces are moving in the direction of increasing pass-throughs. Therefore their adherence to the concept of rent control would be a bit of a mockery. Calling this rent control would be a mockery, since it will allow for multiple increases. I do not mean each unit will have multiple increases; I mean there will be a multiplicity of different increased rates for various apartments across the province.

1600

I think the government is entitled to call it whatever it wants and it will do that. I believe really the true wizards of rent control will not necessarily be the inspectors or the review officers, but rather those wordsmiths in the public relations department and the Ministry of Housing which are going to have their hands full convincing tenants that they have given them what they promised them in the last provincial election.

**Mr Owens:** It probably will not come as any surprise that I am going to disagree with the three previous speakers in that this bill does not provide a good level of rent control for tenants in this province. I think what we have done is



we have removed clauses that have in the past, under previous legislation, provided ample profits for landlords at the expense of tenants in that maintenance was not done and services were withdrawn. We have closed those loopholes.

It is funny that Ms Poole in her comments epitomized the Liberal philosophy. When they are in opposition they talk like New Democrats, but when they are in government they govern like Tories.

I fully believe the rights of tenants have been enhanced. Enshrining words like "neglect" and making them a provable entity in order to have enforcement is a major step forward for tenants in this province. As I said at the beginning, I do not think it is going to be any surprise that I am not going to support the Liberal amendment.

I think this bill, like all pieces of legislation, no matter which government passes them, is not 110% perfect, but we are putting in a system that I feel is workable. I know the minister is going to continue to monitor the situation, along with her staff. As changes are needed, those changes will be made.

**Ms Poole:** I have taken the comments of both Mrs Marland and Mr Jackson very much to heart; there is much in what they have said that I totally agree with, so I am proposing a friendly amendment to them. If it is acceptable, I will formally make that amendment. That would be that the short title of this act is entitled the Socialist Interventionist and Broken Promises Act. If that would be acceptable to my—

Interjections.

**Ms Poole:** I will formally withdraw my amendment at this time and introduce the new amendment.

**The Acting Chair (Mr Morin):** Ms Poole moves that the short title of this act is the Socialist Interventionist and Broken Promises Act.

**Hon Ms Gigantes:** That is tempting, that one.

**The Acting Chair (Mr Morin):** Mr Mammoliti.

**Mrs Marland:** One final fairy story, right?

**Mr Mammoliti:** If you recall in the Chicken Little story, I believe the wolf took the chicken and the rooster and ate them all up at the end in a cave. I would compare that cave to perhaps a building that existed prior to this piece of legislation being implemented, and perhaps that wolf to some of the landlords I know out there and how the poor chicken and her friends got gobbled up. Perhaps it is time to find a new story; you are right, Mrs Marland. Maybe I will do that.

I am not going to support this amendment for a couple of reasons. I disagree with you wholeheartedly, Mrs Poole, in that you defined—this I do agree with, by the way—rent review. You just defined rent review. You just admitted that you made a mistake and that your piece of legislation, Bill 51, was unclear. You defined it, in so many words, as a big waste. I agree with you there.

**Ms Poole:** On a point of order, Mr Chair: My comments have been totally misrepresented by the member for Yorkview and bear no resemblance to any fact or truth.

**The Acting Chair (Mr Morin):** Mr Mammoliti, please continue.

**Mr Mammoliti:** Where I disagree with you is where this is a broken promise. A number of tenants in my riding have been waiting for our piece of legislation to go through. I am hoping it will go through as quickly as possible. I am happy we have moved fairly quickly over the past few days. I am looking forward to the spring session. You will be happy, as will I, that we will at that time be at the stage when tenants can refer to a piece of legislation they can be comfortable with.

It may not be perfect—I have said this from day one—and there may even be a couple of clauses I may not agree with in this piece of legislation, but I believe we have taken a stance as a government. I believe the people out there, the tenants out there have wanted some leadership and I think we have provided that leadership through Bill 121. For those reasons, I will not be supporting this amendment.

**Hon Ms Gigantes:** Hurry up, George. We still have lots to do.

**Mr Mammoliti:** We do have lots to do. Mrs Marland's remarks speak for themselves. I am not going to stoop as low as Mrs Marland and her colleague beside her. They have insulted continuously, and I do take some offence at that.

**Mr Jackson:** Who have we insulted?

**The Acting Chair (Mr Morin):** Order.

**Mr Mammoliti:** It is not worth attacking. I will leave it at that. We should continue.

**Mr Jackson:** I would like to know to whom he is referring. That is a blanket statement. I have the right to ask that the question be answered.

**The Acting Chair (Mr Morin):** This not a point of order. Are you through, Mr Mammoliti?

**Mr Mammoliti:** I am through, yes.

**Mr Jackson:** An allegation was made. Are you going to gloss over that?

**The Acting Chair (Mr Morin):** Mrs Marland.

**Mrs Marland:** I have some concern with Mr Mammoliti's comments that we have been insulting. Perhaps when he has an opportunity, he would like to identify. We certainly have enough volumes here of Hansard that can record whether that is the case.

Although the critic for the official opposition, the member for Eglinton, is sincere in her amendment, I think we all very much understand the frustration behind her amendment, which otherwise might be perceived as being a little facetious in its wording. The concern I have expressed all the way through this legislation is because of the lack of opportunity for the ordinary person on the street to ever be able to know what his rights are, whether he owns or rents property. It is a travesty to be saying one thing publicly—in other words, that you are protecting tenants—when really you are not, or to be suggesting that you are treating property owners fairly when really you are not.

1610

The concern I have is that this piece of legislation, as I said a few moments ago, is not in the best interests of the future of this province in any way at all. The way it is



executed is the part I think has the gravest concern for all of us who understand what it means when you give power to one individual.

In earlier days my comments referring to a rent officer as a wizard were also facetious, but actually it is an apt reference, because whatever that rent officer says is final. There are no comparable statutes where that much power is given to one individual in this province, and that one individual's judgement is without recourse to appeal and may involve thousands and millions of dollars to injured parties as a result of the decision, on either side: tenants who still are faced with an increase in their rent because of his decision or property owners who are faced with a decrease in rent because of his decision. They have nowhere to go with that decision, no recourse of appeal whatsoever. I think that is one of the gravest concerns, combined with this right of search and seizure based on allegations only, not based on charges, not based on probable grounds, not based on reasonable grounds but based on allegations only.

As far as I am concerned, it does not really matter what this bill is called. This bill is going to go through. I am sure the Bob Rae socialist government is going to proclaim it as soon as it can when the House reconvenes, and it will be on the shoulders of every government member who votes in favour of this bill. Fortunately, it is not going to be on my shoulders or on the shoulders of my party, because we do not believe this represents justice and fairness and equal opportunity to the people who own or rent property in Ontario today. Call it what you want, the repercussions and results from this bill being proclaimed will speak for themselves against socialism in Ontario today.

**Hon Ms Gigantes:** On a point of order, Mr Chair: May I ask what we are discussing?

**The Acting Chair (Mr Morin):** The motion was brought in by Ms Poole: "The short title of the act is the Rent Review Act, 1991."

**Hon Ms Gigantes:** But I understood she had withdrawn that.

**Ms Poole:** That is right. I put in another amendment, which the clerk was copying.

**The Acting Chair (Mr Morin):** "The short title of this act is the Socialist Intervention and Broken Promises Act, 1991."

Sometimes the Chairman has to be discreet. The next person is Mr Owens.

**Mr Owens:** In the interest of returning back to the business of the people of this province, I am not going to comment on the rather facetious amendment that the member, the person who claims to care about tenants in this province, has put in to rename this act.

**Mr Jackson:** Is that actually in order? Would that be your ruling? Should not the name at least reasonably flow from the main title? Is there no guidance in this regard or can the government just call it anything it wants?

**The Acting Chair (Mr Morin):** I am in your hands, let me tell you.

**Mr Jackson:** The clerk is about to whisper in your ear.

**The Acting Chair (Mr Morin):** Let me tell you this: It is 4:15 and it is Friday. If you want to spend as much time until 6 o'clock, feel free to do so.

**Mrs Marland:** I think it is Thursday.

**The Acting Chair (Mr Morin):** I do not know. Some amendments to me are not done in good taste, in any case, but if this is what you want to debate, you are free to do so.

**Mr Jackson:** I asked you if it was in order and the clerk was about to advise you. Some of those words are in order but surely "socialist" is not in order.

**The Acting Chair (Mr Morin):** When it was introduced by Mrs Poole, nobody disagreed with it, the debate went on and it continued on.

**Mr Abel:** I would like to call the question.

**The Acting Chair (Mr Morin):** Mr Owens, are you through?

**Mr Owens:** Absolutely.

Motion negatived.

Section 130 agreed to.

**The Acting Chair (Mr Morin):** There were some motions that were stood down and these are the ones we will deal with now. The first one was brought in by Mrs Marland, section 18.1.

**The Chair:** Mrs Marland moves that the bill be amended by adding the following section:

"Equalization

"18.1 The landlord may base an application on a request to apportion the rents charged in the residential complex in order to achieve equalization of rents for similar rental units within the residential complex."

I am predisposed to rule this out of order because the question was decided in section 22.2. Before I rule, I will give you the opportunity to explain to the Chair why this is significantly different from the motion we have already dealt with.

**Mrs Marland:** I believe the amendment I have just moved speaks for itself. If there is obviously no support for it, there is no point in making any further comment.

**The Chair:** Why is this different from the amendment dealing with equalization we have already dealt with that I believe was placed by Ms Poole? If you can demonstrate to me that there is a significant difference between the two, I will be pleased to have us continue.

**Mr Jackson:** If I might be of assistance to my colleague, the Liberal motion as I understand it made reference to a cap, which is a more substantive inhibitor, whereas this upholds the principle of equalization, something which tenants requested fairly consistently when it was not in concurrent pieces of rent review or control legislation in this province since 1975. This feature is not like the Liberal one which had this major cap feature.

**The Chair:** Mrs Marland, I believe your amendment is in order. There is a significant difference between the two.

**Mrs Marland:** Although I am not at all optimistic at this point that the socialist government members of the committee are going to support this, even though it flows directly into dealing fairly with everyone who is a tenant in

a residential complex, obviously when you are talking about equalization of rents for a similar rental unit within the same residential complex, it makes eminent common sense that if you want to be fair to everybody you would support this amendment. If you do not want to be fair to everybody and treat tenants equally, then you do not support it. I am at the point where I do not anticipate the support of the government members for this. If they choose to represent all their constituents fairly and equally, they will support it.

**The Chair:** Thank you. Further questions and comments on Mrs Marland's amendment, section 18.1. Ms Poole. 1620

**Ms Poole:** I do not want to belabour this; it has already been debated in another form. I just want to signify that the Liberal caucus will support the equalization motion by the Conservatives.

**The Chair:** Thank you, Ms Poole. Further questions or comments. Mr Jackson.

**Mr Jackson:** If the minister could briefly indicate, are there no grounds on which a tenant can address the inequality of similar units before a rent review officer? There is no other opportunity.

**Hon Ms Gigantes:** That is correct.

**Mr Jackson:** Then I very deeply regret that, having heard from tenants since 1975 about the need for that to occur; for the record.

**The Chair:** Further questions or comments to Mrs Marland's amendment, section 18.1.

**Mrs Marland:** I would like a recorded vote.

**The Chair:** A recorded vote has been requested.

All in favour of Mrs Marland's amendment, section 18.1.

The committee divided on Mrs Marland's motion, which was negated on the following vote:

#### Ayes-3

Jackson, Marland, Poole.

#### Nays-5

Abel, Gigantes, Lessard, Martin, Owens.

#### Section 20:

**The Chair:** We will then move to subsection 20(8), which was stood down. I understand there is an agreement that the Conservative amendment Mrs Marland was to place will be dealt with in committee of the whole.

**Hon Ms Gigantes:** I think the agreement is that we would pass subsection 20(8) as it is printed in the legislation and deal with Mrs Marland's concern in section 125, so we would proceed with it.

**Mrs Marland:** I received agreement earlier this afternoon from the minister that the concerns I was addressing in those two amendments will be dealt in committee of the whole House under section 125.

**The Chair:** Thank you, Mrs Marland. Do we have any further discussion on subsection 20(8)? Shall subsection 20(8), as amended, carry? Carried.

Section 20, as amended, agreed to.

#### Section 22:

**The Chair:** Have we done subsection 22(3)? Subsection 22(3) has been stood down.

**Hon Ms Gigantes:** I believe that, again, the issue which has generated Mrs Marland's concern on the PC motion is, by agreement, to be addressed in committee of the whole through a proposed change to section 125. Therefore, I suggest we deal with the section as printed, and we are agreed to changing section 125 at a later stage.

**The Chair:** Questions or comments to subsection 22(3)? Shall subsection 22(3), as amended, carry? Carried.

**The Chair:** Subsection 22(3.1).

**Ms Poole:** Is that as reprinted in the—

**The Chair:** As reprinted in the bill.

Shall subsection 22(3.1), as amended, carry? Carried.

**Mrs Marland:** Mr Chairman, I have a question relevant to a question I raised yesterday about the lists of participants at the public hearing. It is not relevant to the section we are dealing with, but since we are going over everything—I asked if we could have the lists of the names and associations of those people. I wondered if Ms Parrish could indicate when we might get those lists. Would it be before the committee of the whole?

**Ms Parrish:** Certainly. I am hoping next week, Mrs Marland, but staff have been busy trying to get all these things organized for today, so we did not get a chance to start last night.

**Mrs Marland:** That is fine. Thank you.

**The Chair:** Subsection 22(4): questions or comments? Shall subsection 22(4) carry? Carried.

**Ms Poole:** Mr Chair, why was this one stood down?

**Hon Ms Gigantes:** It was the same—

**Ms Poole:** As section 125?

**Hon Ms Gigantes:** Right.

**Ms Poole:** Okay, that is fine.

**The Chair:** Subsection 22(5): There is a government amendment to this subsection.

**Hon Ms Gigantes:** Mr Chair, if you will just give us a moment here. Do we deal with this through section 125, too? No?

**The Chair:** There is an amendment to the amendment here?

**Hon Ms Gigantes:** I will move the government motion.

**The Chair:** Hon Ms Gigantes moves that subsection 22(5) of the bill, as reprinted to show the amendments proposed by the minister, be struck out and the following substituted:

"Idem

"(5) The part of the guideline allocated to capital expenditures shall not be included in determining the maximum rents under clause (3)(c) for any of the rental units in the residential complex if the amount carried forward relates to a capital expenditure originally claimed under section 15 or 16.

"Idem



“(5.1) The part of the guideline allocated to capital expenditures shall not be included in determining the maximum rent under clause (3)(c) for a rental unit in a residential complex if subsection (5) does not apply and if the amount carried forward relates to a capital expenditure claimed under section 17.”

Explanation, please.

**Hon Ms Gigantes:** What we are doing here is providing that there is a parallel process to subsections 20(3) and 20(4) that makes sure the 2% in the guideline which is for capital is not included in the calculation of the maximum rent if there is an order for an above-guideline increase for capital that is in a carry-forward allowance.

There is an exception related to section 17 in which the 2% in the guideline allocated to capital would not be included in the determination of the maximum for only the affected units. It is quite a technical amendment, Mr Chair, and what it does is indicate that the 2% within the guideline for capital, in the case of a carry-forward—no, help me here.

**Ms Parrish:** What it says is that when you bring in a building, you must bring in all the two per cents in all of the rents and then you say, “What is the capital that you are doing in the building?” You look at the cost and all the two per cents in the rents and allocate those capital repairs to the units throughout the building, because some units may be getting more benefit than other units. We establish as the basic rule that you must bring in the two per cents related to all the rents in the building and add the capital allowance, and then we create an exception in the case where you are only doing an en suite repair, because it does not seem appropriate to bring in the rents of all these other folks when you are having an en suite repair which only you benefit from and which may or may not be necessary.

1630

**Ms Poole:** I have a question for the minister.

**Hon Ms Gigantes:** I knew it.

**Ms Poole:** Is this the simpler, easier-to-understand, transparent legislation tenants are going to really revel in because it is absolutely clear to them what each of these sections mean? Is this the kind of section you were referring to?

**Hon Ms Gigantes:** Absolutely.

**Ms Poole:** That is what I was afraid of.

**Hon Ms Gigantes:** We have never claimed the legal language involved in describing the concepts we are putting into legislative effect in Bill 121 was simple, but the concepts involved are simple, easy to comprehend and very effective from the tenants' point of view.

**Ms Poole:** I must just be a little slow, Minister, because even when Ms Parrish explained what the legalese meant, I was not quite sure at the end of the day I knew what it meant. So we will just leave it at that.

**Hon Ms Gigantes:** I think if you had your own apartment before you as an example and watched subsections 22(5) and (5.1) being applied to it, you would feel very satisfied that what was happening was clear and fair.

**Ms Poole:** I think what I would understand, Minister, is at the end of the day I would be paying slightly less rent because of it, but I would not pretend to think it was clear or understandable. Maybe tenants would be satisfied from the first vantage point, but not necessarily the latter. Anyway, I think we should proceed.

**The Chair:** Thank you. Further questions and comments on Ms Gigantes's amendment to subsection 22(5)? Shall Ms Gigantes's amendment to subsection 22(5) carry? Carried.

Shall section 22, as amended, carry?

Section 22, as amended, agreed to.

Section 26:

**The Chair:** Section 26, which was stood down for some reason—

**Interjection:** Because Mrs Marland was not here to move an amendment to it.

**The Chair:** Mr Jackson, you have an amendment.

**Mr Jackson:** Yes. I have to locate it, Mr Chairman, with your indulgence.

**The Chair:** Mr Jackson moves that section 26 of the bill be struck out and the following amendment substituted:

“26. The tenant may base an application on any discontinuance or reduction in the services and facilities provided in respect of the rental unit or of the whole residential complex to the extent only that such services and facilities have previously been incorporated into the rent structure.”

Mr Jackson, an explanation.

**Mr Jackson:** I think it is self-explanatory, in the interests of time.

**Hon Ms Gigantes:** I think if I simply said it was redundant in our view, that would be the simplest, clearest explanation of our position.

**Mr Jackson:** Is it therefore clear in the minister's mind that services the landlord provided at his own expense and which for economic reasons could not continue would result in a diminution of rent adjustment or that they would therefore not be considered? I think what it says is that all withdrawal of services had to have been previously part of the services offered and therefore part of the calculation.

**Hon Ms Gigantes:** I think we are getting now into contention about what makes up a service, as included in the rent.

**Mr Jackson:** No, I am asking you to explain clearly what you mean by “redundant.”

**Hon Ms Gigantes:** I mean redundant in the sense that the service was included in the rent. If it is removed the amount will no longer be allowed within the rent.

**Ms Poole:** Mr Chair, if I could be helpful, with Mr Jackson's permission maybe I could give you an example of what I think Mr Jackson means. If a tenant is paying \$400 in rent and the landlord puts a new swimming pool into the building and following that swimming pool being put in the rent is still \$400 and does not go up because the swimming pool went in, and the following year the landlord withdraws the service and does not maintain the swimming pool—he closes it down because he cannot



afford all the maintenance to it—but the cost of it was never incorporated into the rent or included in the rent at the time the rent was set, then he does not feel it would be fair that the landlord would be penalized by taking an amount out of the rent as compensation when no part of the rent ever included the cost of it to begin with. I do not know if that makes it clear. That is my understanding.

**Hon Ms Gigantes:** No, it does not. It is such an unlikely situation.

**Mr Jackson:** I will give you a more likely situation, to do with the provision of day care services. When I was chairman of the housing authority in this province we actively moved to enhance access to day care services, but economic times being as they were, since I have left the authority I witnessed that we have had to remove them. The issue here on day care would be: "I have easy access because it is available on my site. It is not a bonus. It is not part of my rent package. It is separate and distinct."

Your government may wish to encourage these kinds of non-profit day care centres in residential units. In fact, we have negotiated some upsizing of densities in Toronto as a condition of getting these kinds of things in, but they are separate and distinct from the rent.

At the moment that the centre closes, the tenant could make a reasonable and cogent argument that services that were available to him have been removed, but they were never included in the rent so he does not have a case. Because your legislation is unclear and does not specifically say that, the service that is no longer available onsite is now no longer available and therefore should be adjusted. I know all the cases of why an adjustment should occur. I support that, because I fought those before a review board and won.

I simply want to ensure that we do not compromise certain issues of fairness simply because the landlord, for whatever reason—a social conscience, or a ramp that he puts in for a disabled person—does not increase the rents as a result of that but when the disabled person leaves the ramp is gone. Now does the tenant have the case: "I enjoyed walking the ramp. It was easier for me than the steps and therefore I should have my rent reduced?"

I could go on, but I will not take a lot of time. I am not satisfied with the minister's answer that it is redundant. If she wishes to state clearly for the record that she does not care about this issue, then we will drop it. If she shares some of the concerns I have raised, then I ask that we deal with it.

**Hon Ms Gigantes:** I feel none of your concerns because I do not think there would be a difficulty in any of those cases. It is not that I do not care; I do not believe there would be a difficulty.

**Mr Jackson:** Then I ask you again, Minister, what section says that? That is all.

**Hon Ms Gigantes:** Perhaps Ms Parrish could speak to our experience on matters of this type.

**Ms Parrish:** Of course there is always a guess initially as to what services and facilities are provided, but they have to be provided with respect to the rental unit and the whole residential complex and they must be provided by

the landlord. If it is somebody else who is providing this service and it was in the building and then it is withdrawn, it has nothing to do with the landlord. With respect, the problem you really are having is what is a service and facility with respect to the residential complex, which is a decision of fact to be made by a rent officer. Adding whether or not it has been previously incorporated into the rent structure does not resolve that problem.

**Hon Ms Gigantes:** That is right.

1640

**Ms Parrish:** All it does is add another thing to worry about, which is, "How can I tell if something has been incorporated in the rent structure?" For example, it may be true that the rent has not gone up from year to year. It may also be the case that market conditions are such that you would have expected the rent to go down. But the rent did not go down, because the tenants wanted to stay because of this amenity.

With respect, I do not think that adding this thing about whether it was previously incorporated deals with the problem you have identified, which is, what is a service or facility provided in respect to the rental unit? But in any event, that is a determination of fact to be made by the rent officer based on the evidence at the hearing.

**Mr Jackson:** Not to belabour the point, what our amendment deals with is that it will force an immediate decision as to whether or not it has been part of the calculation of the rent. If it was not, then a case would not be allowed to continue on that basis.

**Hon Ms Gigantes:** That would be the first matter to be determined.

**Mr Jackson:** Perhaps, but there are other examples: A landlord does not provide a health club onsite. He sublets because a portion of his real estate is a commercial unit, so the tenants get a 25% discount. Now all of a sudden the health club is gone. That represented an opportunity that was restricted to the tenants which now is no longer there. Its basis is an inducement, but if your test at law is simply whether or not it was a service provided by the landlord, I see it as fraught with difficulty. I use the health club as a classic because I know that has occurred.

**Hon Ms Gigantes:** I think that the redefinition, which is what you are attempting to introduce—

**Mr Jackson:** No.

**Hon Ms Gigantes:** —amounts to nothing more than a statement once again that what is to be considered is what was in the rent, what was represented by the rent in terms of a service. Again, as Ms Parrish has indicated, I do not think it is going to be helpful. If you were the rent officer, this would be the first thing that would come to your mind as a question in the case: Was this a service provided by the landlord for which the tenant paid in part through the rent or part of the rent of which?

**Mr Jackson:** When we have time I would love to debate the legal points on inducement to rent that caused a contract. There are implications here. It is set out that if it did not form part of the rent, then it was not included. I would



argue, on my client's behalf, that it was an inducement to locate there, and now that I have lost that inducement—

**Hon Ms Gigantes:** That is a separate matter.

**Mr Jackson:** I know, but the legislation does not clearly say it can be exempt, that is all. You leave it to the wizards' definition; that is fine by me.

Motion negatived.

Section 26 agreed to.

Section 28:

**The Chair:** I believe there is an amendment to be placed.

Mrs Marland moves that subsection 28(1) of the bill, as reprinted to show the amendments proposed by the minister, be amended by substituting the following:

"28(1) On an application under section 23, a rent officer may, according to the prescribed rules:

"(a) order that the amount of rent charged for the rental unit be increased by an amount less than guideline; or

"(b) order that the amount of rent charged for the rental unit be reduced by a specified amount for a specified period of time; or

"(c) order that no increase is to be made in the maximum rent."

**Mrs Marland:** This amendment is consistent with the philosophy that the fate of maximum rents should not be so tenuous as to be automatically or systematically, systemically—

**Mr Jackson:** Systemically?

**Mrs Marland:** Yes, systemically. It is either a typo or I am mispronouncing it.

**Mr Jackson:** It is typed as "systemic," but—

**Mrs Marland:** It is typed as "systemic," but I think the intent is that it would read "systematically"—automatically or systematically. It is rather redundant either way.

**Mr Jackson:** It is only an explanation. It does not always have to be clear.

**Mrs Marland:** I am sorry it is typed that way, Mr Chairman. Anyway, reduced below a reasonable sum. Rather than reductions, increases should be checked or held in line until the status of the change in service or operation costs, which resulted in the tenant's application, changes.

**Hon Ms Gigantes:** I read the amendment which has been proposed here as an amendment which would have the effect of preventing a situation in which the rent officer could lower the maximum rent by an order; clear and simple. That is not acceptable to the government. It is our position that under this legislation, and given certain conditions which are set out in this legislation, it is possible that there will be cases where the rent officer will lower the maximum rent.

Motion negatived.

**The Chair:** Shall subsection 28(1) carry? Carried.

Shall subsection 28(2.1) carry? Carried.

Shall subsections 28(3), (4) and (5) carry? Carried.

Section 28, as amended, agreed to.

Section 29:

**Mrs Marland:** I move that subsection 29(2) of the bill be amended by adding the following clause:

"(ba) if a proposed expenditure is in respect of the residential complex, to determine if 75% of the tenants who would be affected by the application have consented to it;"

**The Chair:** Mrs Marland, I would accept some arguments about this being in order, as we have decided in some previous sections about this issue; was it 17?

**Hon Ms Gigantes:** Subsection 17(1).

**Ms Poole:** I may be incorrect, but my vague recollection of why we stood down section 29 was because in (2) I had queried whether we should not be saying "written findings" instead of just "findings," and that we were going to talk about it in the procedural sections. I am not sure if that is accurate, but I thought we already dealt with Mrs Marland's amendment.

**Hon Ms Gigantes:** We did, under 17(1).

**The Chair:** Let's just take a moment and we will check this.

I am told by staff that Mrs Marland's amendment has not been debated. However, it has been dealt with, unless Mrs Marland can provide me with some reason to understand that it is significantly different than what the committee has already decided.

1650

**Mrs Marland:** I think under 29 it is dealing with a different matter. Certainly the percentage is the same, but I think it is dealing with a different matter than is addressed under section 17. For that reason, I think it should stand as an amendment to section 29, albeit the percentage is the same and albeit I am attempting to insert another clause for democracy in 1992 in Ontario. Just because it was defeated under another section does not mean that with a different association we cannot try again under section 29.

**The Chair:** Mrs Marland, I am going to have to rule that it is not in order and that the decision made in subsection 17(1) directly affects this section. We will then deal with section 29. Any questions or comments to section 29? Mrs Poole.

**Ms Poole:** At this stage I do not quite know what we have passed and what we have not.

**The Chair:** I am trying to be helpful, Mrs Poole.

**Ms Poole:** But I recall asking about written findings and I recall we agreed it would be dealt with in the procedural section. I just wondered if I could have confirmation. My belief is, in the procedural section it does say "written reasons". Have we stood down the section as to whether written reasons would automatically be provided or whether it would stay as it was originally, that it would be at the request?

**Ms Parrish:** We amended the section to provide that there would be written reasons in every case.

**Ms Poole:** I am happy, Mr Chair.

**The Chair:** Further discussion of section 29? Shall section 29 carry?

Section 29 agreed to.

Section 39:

**Hon Ms Gigantes:** I believe the government motion had been moved and that we had set the—

**The Chair:** The staff tells me that is not correct.

**Hon Ms Gigantes:** It has not? Good grief. All right, let's go.

**The Chair:** Ms Gigantes moves that subsection 39(1) of the bill, as reprinted to show the amendments proposed by the minister, be amended by striking out "or" at the end of clause (a) and by adding the following clause:

"(a.1) he or she receives a decision on an appeal of a work order that is the subject of the order prohibiting a rent increase and the decision quashes, rescinds or varies the work order; or"

An explanation, Minister?

**Hon Ms Gigantes:** We are expanding the conditions which allow the director to rescind an order prohibiting a rent increase so that where a work order is the subject of an appeal, an appeal decision that quashes the work order will cause the withdrawal of the prohibition order, which therefore would never take effect, and when the work order is varied on appeal, the prohibition order would be rescinded and reissued with a new effective date.

**Ms Poole:** This section was stood down because I had raised a concern that had been expressed by the Tenant Advocacy Group about the term "or varies the work order." What might happen is, where there was a very minor variance in the work order, it would result in the rent increase not being prohibited and not actually end up with the result the ministry and the parties involved really wanted.

There has been an agreement with ministry staff that they are going to try to rework this. We will pass it in its present form right now and it will be reintroduced in committee of the whole House if we can get a more acceptable wording for it.

**Hon Ms Gigantes:** That would be fine.

**The Chair:** So I am to understand what?

**Ms Poole:** We pass it.

**Hon Ms Gigantes:** We will pass the amendments which are being proposed by the government to these sections and we will work on this particular matter to see if there is a way of phrasing our section so that a minor variance would not inhibit the process that we are looking for.

**The Chair:** Shall Ms Gigantes's amendment to subsection 39(1) carry? Carried.

Motion agreed to.

**The Chair:** Ms Gigantes moves that clause 39(1)(b) of the bill, as reprinted to show the amendments proposed by the minister, be struck out and the following substituted:

"(b) he or she is satisfied within thirty days after the day the order prohibiting the rent increase is issued that there is a clerical error in it and that if the order is not rescinded a person will be unfairly prejudiced because of the clerical error."

**Hon Ms Gigantes:** I think that amendment is pretty straightforward.

**The Chair:** Shall Ms Gigantes's amendment to clause 39(1)(b) carry? Carried.

Motion agreed to.

**The Chair:** Ms Gigantes moves that subsection 39(2) of the bill, as reprinted to show the amendments proposed by the minister, be struck out and the following substituted:

"Idem

"(2) The director may issue a new order under section 38 if,

"(a) he or she rescinds an order because of a clerical error or because the work order was varied on appeal; and

"(b) the period for compliance with the work order has expired."

**Hon Ms Gigantes:** Again, I believe the amendment to be pretty self-evident.

**The Chair:** Questions or comments? Shall Ms Gigantes's amendment to subsection 39(2) carry? Carried.

Motion agreed to.

Section 39, as amended, agreed to.

1700

Section 45:

**The Chair:** Subsection 45(1), the Liberal amendment. Mrs Poole.

**Ms Poole:** The Liberal amendment was placed in hopes of solving a problem from a London business person, Mr Riopelle, who wanted to establish carports over exterior parking spaces. I have had long discussions with the ministry as to the appropriate remedy for Mr Riopelle. It does not appear that we can accommodate Mr Riopelle's concern within this legislation as a separate charge.

There does appear to be an option for Mr Riopelle to have a third-party agreement directly with the other tenants and merely get the landlord's permission to install where the tenants have requested it. It would appear under the circumstances that might be his most viable option. I will withdraw our amendment.

**The Chair:** Further questions or comments to section 45?

Section 45, as amended, agreed to.

Section 52:

**The Chair:** Ms Poole had moved an amendment to section 52.

**Hon Ms Gigantes:** We had agreed to set this aside while we all thought more deeply on this question. I propose to Ms Poole, if it would suit her, that we consider the question of prescribing the kinds of documents we would insist be produced in relation to a particular application within regulations. I would be happy to consult with her on that.

**Ms Poole:** That is certainly satisfactory with me. I believe it says in the government amendment to section 52 that the applicant shall file with the application the prescribed material, so there would have to be no further amendment. I thank the minister for that consideration.

**The Chair:** Are you withdrawing your amendment, Mrs Poole?

**Ms Poole:** Yes, I will withdraw the amendment.



**The Chair:** We are then dealing with the government amendment to section 52 which has been placed. Questions or comments?

Section 52, as amended, agreed to.

Section 56:

**The Chair:** Ms Gigantes moves that clause 56(d) of the bill, as reprinted to show the amendments proposed by the minister, be struck out and the following substituted:

“(d) of the right of the parties to request a hearing, a pre-hearing conference or administrative review, as the case may be, as set out in sections 59 through 59.3.”

**Hon Ms Gigantes:** I believe that will meet most of the concerns that have been raised around the question of hearings and whether hearings would take place on those matters that are likely to cause most interest in hearings.

**The Chair:** Questions or comments?

**Mr Owens:** Just a quick thank you to the minister and the minister's staff for coming up with this compromise. It clearly addresses the issues I expressed earlier this week on the rights of tenants with respect to hearings.

**The Chair:** Further questions and comments?

**Ms Poole:** I have discussed possible amendments to the hearings section but I have not seen the amendments. Is there a series of amendments?

**Hon Ms Gigantes:** Yes, there are.

**Ms Poole:** This is one of the—

**Ms Parrish:** Yes, there are amendments to this section, section 59, and section 59.1, 59.2, 59.3 and 60(1).

**Ms Poole:** I was just concerned that this did not address my own concerns but I see that there is lots of paper to come.

**Hon Ms Gigantes:** I very much regret that I have to leave because I have made commitments that I will not be able to meet unless I get on an airplane at 6 o'clock, and that involves my leaving now.

**Ms Poole:** I would just like to express the appreciation, on behalf of the committee members, for the minister's very vigilant attendance at these committee hearings. She has certainly made her time available to us and we deeply appreciate it.

**Hon Ms Gigantes:** The feeling is mutual.

**The Chair:** Shall Ms Gigantes's amendment to clause 56(d) carry? Carried.

Motion agreed to.

**The Chair:** Clauses 56(e) and (f): questions or comments?

**Ms Poole:** I would withdraw the Liberal amendment to clauses 56(d) and (e).

**The Chair:** Thank you. I think you already did clause 56(d), did you not? Shall clauses 56(e) and (f) carry? Carried. Shall section 56, as amended, carry?

Section 56, as amended, agreed to.

Section 59:

**Ms Poole:** While the government's committee whip is getting his notes organized for this, I just wanted to thank the minister and the ministry for their efforts in this behalf.

There was a lot of concern expressed at committee hearings about the fact that there was no automatic right to a hearing and whether this might be problematic.

The ministry has proposed these sections knowing they have been drafted very hastily and might have to be amended in committee of the whole. I think it is on that understanding that we are passing them, and then we will all have sufficient time to study them in greater depth before we get to committee of the whole House.

**The Chair:** Mr Abel moves that section 59 of the bill, as reprinted to show the amendments proposed by the minister, be struck out and the following substituted:

“Application

“59(1) This section applies to all applications under section 13 or 23 that involve more than one rental unit and that are based in whole or in part,

“(a) in the case of an application under section 13, on a capital expenditure as set out in section 15, 16 or 17; or

“(b) in the case of an application under section 23, on inadequate maintenance or repair or a discontinuance or reduction in services and facilities, as set out in section 25 or 26.

“Hearing to be held

“(2) A hearing shall be held unless all of the parties to the application request that the proceeding be determined by administrative review in accordance with this section.

“Request for administrative review

“(3) An applicant who wants a proceeding to be determined by administrative review shall request administrative review in the application.

“Idem

“(4) Any other party to a proceeding may, by written notice to the chief rent officer given 30 days after the date of the acknowledgement notice is issued, request that the proceeding be determined by administrative review.

“Idem

“(5) A rent officer may extend the time for any party to request administrative review at any time before a notice of hearing is issued.

“Application

“59.1(1) This section applies to all applications to which section 59 does not apply.

“Administrative review to apply

“(2) An administrative review shall be held unless a party requests a hearing as set out in this section.

“Request for hearing

“(3) An applicant who wants a hearing to be held shall request the hearing in the application.

“Idem

“(4) Any other party to a proceeding may, by written notice to the chief rent officer given not later than 30 days after the date the acknowledgement notice is issued, request that a hearing be held in respect of the application.

“Extension

“(5) A rent officer may extend the time for any party to request a hearing at any time before a notice of administrative review is issued.

“Deemed waiver

“(6) A party to a proceeding who does not request a hearing as provided in this section shall be deemed to have waived the right to a hearing.

“Administrative review directed

(5) A rent officer may extend the time for any party to request a hearing at any time before a notice of administrative review is issued.

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“Deemed waiver

“(6) A party to a proceeding who does not request a hearing as provided in this section shall be deemed to have waived the right to a hearing.

“Administrative review directed

“59.2(1) The chief rent officer may direct that a proceeding described in subsection 59(1) that was to be determined by a hearing be determined by administrative review if all of the parties consent in writing to the proceeding being determined by administrative review and their consents are filed with the chief rent officer.

“Administrative review directed

“(2) The chief rent officer may direct that a proceeding described in subsection 59.1(1) that was to be determined by a hearing be determined by administrative review if,

“(a) a party who requested a hearing withdraws the request by written notice filed with the chief rent officer before the notice of hearing is issued; and

“(b) all other parties consent in writing to the proceeding being determined by administrative review and their consents are filed with the chief rent officer.

“Notice

“(3) If the chief rent officer directs under this section that a proceeding be determined by administrative review, he or she shall give the parties the notice required by section 62 and shall set out in the notice reasonable time periods for presenting evidence, making submissions and replying.

“Adding parties

“59.3(1) If a party is added to a proceeding and section 59 would have applied to the proceeding if the added party had been a party at the time the application was made, a hearing shall be held unless all of the parties including the added party requests administrative review before the later of,

“(a) 30 days after the party is added; and

“(b) time required under section 59.

“Idem

“(2) If, as a result of subsection (1), a proceeding that was to be determined by administrative review is to be determined by holding a hearing, the chief rent officer shall notify the parties of that fact and shall give them the notice required by section 76.

“Hearing

“59.4(1) A hearing shall be held in respect of an application if,

“(a) section 59 applies to the application and not all of the parties have requested administrative review;

“(b) section 59.1 applies to the application and any party has requested a hearing in accordance with that section; or

“(c) the chief rent officer believes a hearing should be held.

“Idem

“(2) If a hearing is held, the procedural rules set out in sections 76 to 82 shall apply.”

Questions or comments? Shall Mr Abel's amendment to section 59 carry? Carried.

Motion agreed to.

**The Chair:** Shall section 59, as amended, carry?

Section 59, as amended, agreed to.

Section 60:

**The Chair:** Mr Abel moves that subsection 60(1) of the bill, as reprinted to show the amendments proposed by the minister, be struck out and the following substituted:

“Request for pre-hearing conference

“60(1) A party to a proceeding that is to be determined by holding a hearing may request a pre-hearing conference at any time before the notice of hearing is issued.”

Questions or comments? Shall Mr Abel's amendment to subsection 60(1) carry? Carried.

Motion agreed to.

**The Chair:** Shall subsections 60(2) and 60(3) carry? Carried.

Shall section 60, as amended, carry?

**Ms Poole:** Mr Chair, I withdraw the Liberal motion to subsection 60(1).

**The Chair:** It was not moved. Thank you.

Section 60, as amended, agreed to.

Section 72:

**The Chair:** Questions or comments on section 72?

**Ms Parrish:** Members may recall that these sections were stood down because there was a discussion about whether these items were preliminary orders or whether they were procedural orders and whether they should be called preliminary orders. We have done some research into this and we are still of the view that they should be called preliminary orders because some of the items which are dealt with in the orders—for example, the substitution of parties—are not procedural, they are substantive. However, they are preliminary in the sense that they must be dealt with before the substantive issues—for example, what the rent increase is—should be dealt with.

**The Chair:** Further questions or comments? Shall section 72 carry?

Section 72 agreed to.

Section 73 agreed to.

Section 76:

**The Chair:** Questions or comments to section 76? There was some rumour about an amendment.

**Ms Poole:** Mr Chair, I will withdraw the Liberal amendment to subsection 76(1).

**The Chair:** Ms Poole is not going to move the Liberal amendment to subsection 76(1). Shall section 76 carry?

Section 76 agreed to.

Section 83:

**The Chair:** Ms Poole moves that section 83 of the bill, as reprinted to show the amendments proposed by the minister, be struck out and the following substituted:

“Frivolous or vexatious proceeding



"83(1) A rent officer shall discontinue a proceeding if, in his or her opinion, the matter is trivial, frivolous or vexatious or has not been initiated in good faith.

"Fraud

"(2) A rent officer may require an inspector to investigate the conduct of a proceeding if he or she has reason to believe that a party may have filed documents that the party knew or ought to have known contained false or misleading information.

"Idem

"(3) A rent officer may discontinue a proceeding if he or she finds that the applicant filed documents that the applicant knew or ought to have known contained false or misleading information.

"Idem

"(4) A rent officer shall not consider a document filed by a party other than the applicant if he or she finds that the party knew or ought to have known that the document contained false or misleading information."

**Ms Poole:** Mr Chair, I again thank the government for its consideration of our amendment. It has been adapted and re-amended to conform to its request.

**The Chair:** Thank you. Questions or comments? Shall Ms Poole's amendment to section 83 carry?

Motion agreed to.

Section 83, as amended, agreed to.

1720

Section 105.1:

**The Chair:** Moving on to section 105.1, Mrs Marland has an amendment.

**Mrs Marland:** This is one that you are going to want to support.

**The Chair:** Mrs Marland moves that subsection 105.1(1) of the bill, as reprinted to show the amendments proposed by the minister, be struck out and the following substituted:

"Notice re reduction

"105.1(1) If the maximum rent for a rental unit includes a capital component, the registrar shall give the landlord and the tenant of the rental unit written notice that the maximum rent will be decreased by the amount of the capital component.

"(2) The registrar shall give the written notice at least six months before the date on which that capital component is to be deducted from the maximum rent as set out in the most recent order or notice of carry forward that refers to the capital component."

That of course is self-explanatory. Shall Mrs Marland's amendment to subsection 105.1(1) carry? Carried.

Motion agreed to.

**Ms Poole:** On a point of order, Mr Chairman: Does Mrs Marland realize she just proposed an amendment which supports costs no longer borne?

**The Chair:** That was helpful.

**Mrs Marland:** I will say in response to Ms Poole that at least the poor souls can now understand it.

**The Chair:** Shall subsection 105.1(2) carry? Carried.

Section 105.1, as amended, agreed to.

**The Chair:** A Liberal amendment has been moved to subsection 110(1).

**Ms Poole:** Mr Chair, we stood down this amendment until such time as section 130 had been dealt with. Since section 130 was defeated, we will withdraw subsection 110(1).

**The Chair:** Thank you, Ms Poole. Subsection 110(1), questions or comments? Shall subsection 110(1) carry? Carried.

**Mrs Marland:** I think it is fair to place on the record that my moving of subsection 105.1(1) was something I did, not related to the content and the reference, but rather to the fact that I take some pride in having an amendment by the government reworded so that the public can have easier access to at least understanding it, no matter what provisions it refers to.

**The Chair:** Thank you, Mrs Marland.

**Clerk of the Committee:** Do you want to go back to section 1 now?

**The Chair:** Are you sure everything else is done? All right.

Section 1:

**Ms Poole:** Mr Chair, since the Liberal amendment to section 130 failed, I am withdrawing several amendments to section 1. I withdraw the first one, which strikes out "rent control" and replaces it with "rent review." I withdraw where "director" means "the director of rent regulation appointed under section 110." I withdraw the one where "board" means the "Rent Review Appeals Board," since that section also failed.

**The Chair:** Thank you, Ms Poole. Are there further questions, comments or amendments to section 1?

Ms Poole moves that subsection 1(1) be amended by adding the following definition:

"'eligible capital expenditure' means a capital expenditure that is eligible under section 15;"

**Ms Poole:** Mr Chair, may I request a matter of clarification from Ms Parrish? Are the words "eligible capital expenditure" used in the act at present time?

**Ms Parrish:** My recollection, and I would have to just check this, is that this relates to amendments you proposed that would reduce the guideline by 1% rather than the full 2% plus 3% justification in the act. I think it is similar to your other ones where the substantive provision was not passed. I do not think this definition means anything anymore.

**Ms Poole:** Mr Chair, I concur with Ms Parrish and that was my understanding. I just want to ensure that "eligible capital expenditure" did not appear elsewhere in the act. I will withdraw that amendment.

**Ms Parrish:** It does appear in subsection 15(1).

**Ms Poole:** Would this just clarify what "eligible" means, that it is "eligible" under section 15 with the list of necessary repairs?

**Ms Parrish:** I honestly do not think so. We use the term "eligible capital expenditure" and then we say it is "eligible

if," so in essence we define it in subsection 15(2). This is something I could talk about with Betsy and if it is an improvement to understanding the bill we could fix it in clause-by-clause review.

**Ms Poole:** Thank you. On that understanding I will withdraw it, then.

I withdraw the Liberal motion which I tabled concerning the standards board, since that amendment failed.

**The Chair:** Thank you. Further questions, comments or amendments to section 1. Mrs Marland, do you have an amendment to subsection 1(1)?

**Mrs Marland:** Yes.

**The Chair:** Mrs Marland moves that the definition of "rental unit" in subsection 1(1) of the bill be struck out and the following substituted:

"'rental unit' means any living accommodation that is used or intended for use as rented residential premises but does not include a site for a mobile home, a site on which there is a single-family dwelling that is a permanent structure or a room in a boarding house or a lodging house;"

**Mrs Marland:** I think this is a very important amendment because it exempts sites for mobile homes and certain land leases and rooms and boarding and lodging homes from this act. I think we would be in a lot of trouble if we extended the control of this act over those areas including boarding and lodging houses.

**Ms Poole:** It is the Liberal caucus position that there should be separate legislation for mobile home parks, since they engender a number of very different and diverse issues that cannot be dealt with under the Rent Control Act.

1730

**Mrs Marland:** If there are no other comments, maybe I should ask a question: If this amendment fails, can Bill 121 be extended to cover mobile homes, certain land leases, boarding houses and rooming houses?

**Ms Parrish:** Mobile home parks and boarding homes are now covered by rent regulation, and it is my understanding that it is the policy of the government that this should continue. Mobile home parks should be covered by rent control as they were by rent review. Boarding homes, many of whose residents are very vulnerable, are in particular need of the protections of this statute. To provide otherwise would be inconsistent with the protection against eviction which is provided in the Landlord and Tenant Act which is extended to mobile home parks and to residents of boarding and lodging homes.

**Mrs Marland:** This amendment is referring to a site for a mobile home, so it is actually referring to property.

**Ms Parrish:** The drafting is very similar to that in the RRRA as was amended by Bill 4. Usually that is all that is leased. People own the unit and lease the land. That is the only leasable thing in many cases, not in all cases but in most cases. The RRRA applies to these communities and it also applies to boarding and lodging homes. The Landlord and Tenant Act applies to those kinds of structures as well.

**Mrs Marland:** This is a pretty important matter that we are unfortunately dealing with at the midnight hour, because this government and previous governments have

encouraged the use of auxiliary apartments to single-family homes, for example, auxiliary buildings on a single-family lot. They have also encouraged basement apartments in single-family homes and frankly, I see those opportunities as being quite realistic if they are in an owner-occupied building. If a single-family home is owner-occupied and he chooses to make a basement apartment available, it is a way of providing additional housing.

I wonder if Ms Parrish can tell us whether a basement apartment would qualify as a room under the boarding and lodging home description. Is a rooming house a certain number of rooms which have to be sublet in order for it to be called a rooming house or a lodging home?

**Ms Parrish:** No. There is no particular number of rooms. This is the same provision that is in the Landlord and Tenant Act and both acts exclude from their coverage the situation where you may be rooming with someone, with a family for example, and sharing the accommodation with them. If I have someone in my house and so on then that is excluded from the act. But if I have a boarding home then it is rental accommodation like any other rental accommodation and these persons have the same legal protections under the law of Ontario as persons who live in condominiums or rental apartments in large high-rises.

**Mrs Marland:** But in the exact example that I gave you, a single-family home with a basement apartment, does this act cover that basement apartment?

**Ms Parrish:** Yes, and so does the RRRA and so does the Landlord and Tenant Act and they both have for some time.

**Mrs Marland:** The fact that they have historically is something I must admit I was not aware of, but I think it is a disincentive to people to provide that additional housing by providing basement apartments, because if your leasing a basement apartment can now be controlled by this act—which is what you are saying?

**Ms Parrish:** Yes, as it is covered by the current act as well.

**Mrs Marland:** Boy, I think there are a lot of people who do not know that and I think they would think twice about getting into that situation if they are subject to the power and control of this act in terms of the rent they charge to one other party who might share a basement apartment in their house.

**The Chair:** Further questions and comments on Mrs Marland's amendment to subsection 1(1)? Shall Mrs Marland's amendment to subsection 1(1) carry? All in favour? Opposed?

Motion negatived.

Section 1, as amended, agreed to.

Title agreed to.

**The Chair:** Shall the bill as amended carry? All in favour? Opposed? The bill, as amended, will carry. Shall I report the bill, as amended, to the House?

**Mrs Marland:** Can we have a recorded vote, Mr Chairman?

**The Chair:** On the question I just placed?

**Mrs Marland:** Yes, if you do not mind.



**The Chair:** Shall I report the bill, as amended, to the House?

**Ms Poole:** No, I think it is the previous question.

**The Chair:** Shall the bill, as amended, carry?

**Mrs Marland:** No.

**Ms Poole:** No.

**Interjection:** Yes.

**The Chair:** I have had a request for a recorded vote.

**Interjection:** We voted already.

**Mrs Marland:** Oh, we have done this before.

**The Chair:** The request is a little late, but I think in the spirit of cooperation we can record that.

The committee divided on whether the bill, as amended, should carry, which was agreed to on the following vote:

**Ayes—4**

Abel, Lessard, Mammoliti, Owens.

**Nays—2**

Marland, Poole.

**The Chair:** Shall I report the bill, as amended, to the House?

Bill, as amended, ordered to be reported.

**Ms Poole:** Mr Chair, on a point of order: I would like to very much thank a number of people on this committee. I would like to thank Hansard for its very speedy service and all it has done to be helpful to the committee. I would like to thank our legal counsel, Betsy Baldwin, for her invaluable legal advice, notwithstanding the fact that sometimes she told the government members why they should not vote for my amendment. I would like to thank Colleen Parrish, whose intelligence and knowledgeable

attitude towards this bill was truly impressive. In particular I would like to thank our clerk, Deb Deller, and our Chair, Mike Brown, who I think have had supreme patience and forbearance in dealing with a very difficult and complex subject, and a very difficult and oftentimes fractious committee, with humour and with good grace. I thank all those members who have been here on the rent control bill for one year and two months. I do not know how we stood it.

**Mrs Marland:** I have not been on this legislation for one year and two months; it just seems that way.

**Interjections.**

**Mrs Marland:** But I must say that I do heartily endorse the comments of the member for Eglinton about the staff involvement in these proceedings. All the staff Ms Poole identified have been exceptional. In my experience down here, I think their service, frankly, has been quite remarkable and I too have appreciated it very much.

**Mr Owens:** As our whip is overcome with emotion on completing this piece of legislation, I would like to associate myself with the remarks of the Liberal critic and especially thank those at the head table for their sage advice and good humour and those great Smarties and other treats.

**The Chair:** Before I adjourn, I would also like to thank the staff for getting us through what I believe is one of the more difficult pieces of legislation, both from a legislative point of view and frankly, from a partisan political point of view, as members have had great differences in their approaches to this piece of legislation. I would like to thank the members, because on the whole I think we survived this, and that is remarkable in and of itself. I will therefore adjourn the committee. I have some comments to make following that.

The committee adjourned at 1743.

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### STANDING COMMITTEE ON GENERAL GOVERNMENT

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Tuesday 24 March 1992

Standing committee on  
general government

Child Care

## Assemblée législative de l'Ontario

Deuxième session, 35<sup>e</sup> législature

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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON GENERAL GOVERNMENT

Tuesday 24 March 1992

The committee met at 1010 in committee room 2.

### CHILD CARE

Consideration of the designated matter pursuant to standing order 123, relating to child care.

**The Chair:** The standing committee on general government will come to order. The business of the committee today is to deal with standing order 123 in the name of Ms Poole. I believe all members have a copy, but for the purposes of Hansard I will read in the designation:

"The impact on women of the government's policies relating to independent child care centres in that these policies will impose further barriers to women's full and equal participation in the employment market, such examination to include the role of independent child care centres, their history, development, quality and accessibility, and the impact that conversion of these centres into non-profit will have on the public's right to choose, on the economy, on families with children in the centres, on the women who work in the centres, and on the small businesswomen who operate the centres, for the period of 12 hours."

### HONOURABLE MARION BOYD

**The Chair:** We welcome the minister to the committee today. I believe you have a statement.

**Hon Mrs Boyd:** Yes, I would like to start with a statement, Mr Chair. The first thing I would like to say is that, of course, the issue here is not the independence of centres at all. We have not in any way, through our policies, attempted to interfere with independent centres if we know that non-profit centres can be independent and are independent in terms of their operation under boards of directors.

What the government has done is to say that in the future any expansion of financial support to child care will be directed to the non-profit sector. Our contention is that the impact on women and their equity will be great over time and that this move of ours is in no way intended to impact on the equity agenda that we have set forward very strongly for women in this province.

As the minister responsible for women's issues as well as the Minister of Community and Social Services, I have the responsibility of ensuring that the provision of child care is done within that equity framework. It is for that very reason that, prior to beginning the consultation on child care which we announced some weeks ago and which is beginning throughout the province this month, we determined the necessity for us to state very clearly our preference for non-profit care, that it was important for us to put that consultation within that context. It is particularly important, from our point of view, because in order for women to participate fully and in fact to be equitable partners in the economic renewal that is ongoing in this province, it will be necessary for us as a community to

ensure that the children for whom we share responsibility, as the future citizens of our province, have the appropriate care that they require and that parents expect if they are to participate fully in the economic life of the province.

When we look forward into the next century, to 2025, we see a picture demographically in this province that will require women to participate very fully in the workforce. We know that participation has been growing rapidly over the last 30 years, and we know that a majority of women who have children under the age of 12 now participate in the labour force. We also know that this province has for a long time taken a very strong position that licensed child care is of value to the citizens of Ontario, that it is an important way in which we provide nurturing and early childhood education to children, that it is an asset in terms of providing early identification of problems for children and that it provides assurance that those who wish to be in the labour market can also be responsible in their role as parents.

We are certainly in a situation where child care has grown at different rates and in different ways around the province. There are a number of reasons for that. One has been that we have shared with municipalities the responsibility for child care in terms of subsidized child care and different municipalities have taken different positions in terms of their roles in providing that child care. Some municipalities have taken that on as a municipal responsibility and formed municipal corporations to provide child care, and have also purchased service in terms of subsidized care from both the non-profit and the for-profit sector.

In other parts of the community, municipalities have not become directly involved in child care at all, but have purchased from either non-profit or for-profit operations any subsidies they were providing. In still other communities, municipalities have not opted into the subsidy of child care at all, and subsidized child care through municipalities is not available in many areas.

Part of what we are saying as a government is that it is time we stopped some of these inconsistencies and actually provided across the province the kind of equity of opportunity to enjoy licensed child care for those who choose to use it and for those who need to use it, and the only way we can do that is to really begin to reform the entire system so it becomes a system.

Right now we have very good care. We are certainly envied by many other jurisdictions for the efforts that have been put in by previous governments and by the current government into building child care as a form of service that is available to Ontarians. But it has been done on a fairly haphazard basis. It is not a systematic provision. It is not something that parents can be sure they will be able to find if they move from one part of this province to another and find jobs in that other part of the province. We have to

be very aware that mobility is extremely important to employment equity these days.

We have made the determination that we are prepared to look at the entire way in which we provide child care, to look at the regulations under which we currently provide it and to look at the need for flexibility to meet the needs of those in northern communities, those in rural communities, those who are on shift work and those who are on seasonal work. Those kinds of needs are not met very well by the current Day Nurseries Act. We are saying that in the course of doing that we have to make some decisions about how we are going to allocate our resources.

Given the fiscal picture we all face right now, we know that we do not have large amounts of resources to pour into the system at this particular point in time and that we have to make some choices about how to strategically spend our dollars in order to work towards that equitable and consistent system. From our point of view as a government, we believe very strongly that, given the scarcity of public dollars, it is important to ensure that those public dollars are spent within the public sector and it is important for us to have the kind of monitoring that is available in that way, the kind of scrutiny and accountability by communities, both about the dollars and also about the kinds of programs and the kind of treatment children are getting, and that among our communities, parents have the right to have a good deal of input into that.

1020

In the private for-profit sector, there is no requirement for commercial operations to have a community-based or parent-based board of directors that makes the decisions, both the financial decisions and the program decisions, the staffing decisions, all the decisions that go to make up the total experience children have in child care.

We are saying we think that kind of parental input is extremely important. It is part of the shared responsibility we see ourselves having for child care. We believe the non-profit sector offers the opportunity for parents to be more involved in the care their children receive in child care, and that is an important aspect.

We need to remember that when we talk about child care, there are a number of different ways in which we deliver it. It is delivered through centres. Mostly when people talk about child care, they talk about child care centres where there is group care for children of different ages according to the licensing requirements. But there is also delivery through the private home child care system, which is another form of licensed care that takes place in private homes.

Again, we believe it is important for that kind of care to be operated through the non-profit systems so there can be the kind of input by staff, by providers and by parents, as well as the community at large. We think in that way the needs of the community, the needs of the children, and the needs of their parents will be met most appropriately.

The other part of the system we need to talk about is the supports that we do have in place. They are not direct financial supports but the supports that we have in place for women who care for their children in their homes or who on an informal basis care for other people's children

in their homes. We have limits on the number of children who can be looked after in an informal setting, but we know there need to be some program supports as well if those children are going to have equitable treatment. So the growth of children's resource centres, which offer toy lending libraries, book lending libraries, may offer some assistance to people in child management areas and so on. They have grown up as a kind of corollary service and one which we see in the future as being very supportive of equitable child care.

The question, as it is put for consideration, talks about the role, history and development of the for-profit sector. There is no question in my mind, having been involved for over 20 years in the child care sector, that the contributions of those who provide child care through the for-profit sector have been great. I come from a part of the province where the for-profit sector took the lead in the provision of child care in the early days of child care. There is no question in my mind about the dedication and concern for children that have been there on the part of many for-profit operators.

I would find it very distressing if there were to be a general sort of assumption that our decision in this way casts aspersions on the quality of care that is offered through the for-profit sector, even though there is certainly evidence in many research reports that there are some differences in quality between for-profit and non-profit care. That was not the major concern that led us to this decision. The major concern was the use of public dollars within the accountable public sector. That is our major concern at this point in time.

The impact of conversion on these centres: The whole purpose in our decision, as it came down, was to try to lessen the impact of our decision to direct provincial dollars only into the non-profit sector. We decided to dedicate a considerable number of dollars to try and ameliorate the effects of this decision on centres that have been operating. We are quite aware that because those dollars will have to be spent strategically, there will not simply be an open pot of money to which everyone can refer. There will be many who may be disappointed with the speed with which conversion can take place if they have decided upon conversion, but we did not feel it was fair for us simply to say that in future all dollars will be directed into the public sector and not provide some means for centres that have been operating and offering good care to be converted into non-profit centres.

There has been some concern and some misinformation, frankly, about the way in which this whole process will operate. In the first place it is important for the committee to be very clear that those centres that now get public funding through the direct operating grant and have subsidies contracts will continue to receive those grants at the level they now do. We are stating very clearly that they need to be grandparented out. They have operated in good faith in this province. Since 1987, when the previous government decided to be very clear in the direction of dollars to the non-profit sector, they have operated on the understanding that they can be sure of a certain level of support. The centres that were in operation and were eligible for the



direct operating grant when it was instituted in 1987 ought to continue to enjoy that support.

What we are saying is that the increase in the for-profit sector and the increase in that sector with any expectation operators might have that they will subsequently have access to public funding is not a realistic expectation. We will continue to license the centres that meet the criteria in the Day Nurseries Act so that they are responsible themselves for having a business plan which requires them to operate without public funding. The choice is certainly there for those operators.

This is a situation very similar to when the public education system was growing in the last century. There were many private schools. When we as a community moved to the realization that it was important for us to provide accessible education to all the children in Ontario, there was a move from the privatized approach to a public sector approach. As we gradually move through the end of this century and into the next century, this whole aspect of child care is moving very much from a kind of charitable, corollary provision of care for children to an essential kind of care for children. As we do that we need to be mindful of the need to direct our funds in that way.

We have provided an opportunity for a reference group both from the for-profit and non-profit sectors to assist us in how to strategically direct the conversion funds. We think it is very important that the way this is done be informed by the kind of experience those who are private operators have, and that we not simply make decisions on a gross sort of basis but that we really look at the particular operations that are being converted and at how we can best use our dollars to ameliorate the effect of this decision on the operators themselves and ensure that our public dollars are spent most appropriately.

We need to be very clear that some of the decisions that were made in the past have led to some of the distress that the child care sector is experiencing now. One of the decisions I personally think was a very good decision and one I certainly support the continuance of was when the previous government decided new schools would have child care facilities attached to them. We think that was a good decision. We think it is something that has been an important component in the acceptance of child care at the community level.

1030

What that decision did was not to strategically place the dollars. It took no account of whether there were private child care operations or non-profit child care operations in the vicinity of a new school. So we have many instances where we have public funds going into child cares in the same area and we have not strategically placed those dollars. Some of the distress that some of the centres have experienced has arisen from that kind of unplanned competition, which really has added to the distress in terms of enrolment.

There has been an argument that the better way would be not to spend those public dollars in the schools. We do not accept that argument. We say we have evolved greatly in our view of child care over the last 20 years. There is great support within communities for the notion of a con-

tinuous day, what we would call a seamless day, for children who can participate in child care within their communities, in a school where their siblings attend, move into junior or senior kindergarten if necessary, and if the availability of after-school care is also there, be able to maintain that. That provides a stability for children and it is something we think we want to support.

But we must be mindful that it has an effect on communities and on other child care operations in communities. What we need to be doing as a ministry is looking at the picture in a very strategic way, looking at the number of children who can be expected to use child care, looking at the number who will expect and need to have subsidized child care, looking at the number who are going to be going to child care close to their homes and those whose parents may choose to have them go close to their place of work; how all that affects the numbers we need to be looking at as we provide a system of child care.

We cannot do that unless we have some sense of how those dollars can be spent in the most strategic way. That is a very important aspect of the conversion we are doing. We are not saying that everyone who suddenly decides they want to convert will be able to convert right away. We are saying that as we go through the conversion process we need to focus on those areas that at the current time have no non-profit care or have too little non-profit care, and where there is a great deal of care being offered and available to parents, that will take a lower priority. We need to be very clear about that.

The last aspect, I would say, is the concern there has been around the wage subsidy, which is a form of down payment on pay equity. It is very important for this committee to understand that our decision to direct the pay equity down payment specifically to the non-profit sector was a very deeply considered decision originally announced by the minister in January 1991 and confirmed as part of the conversion package late this year. Our decision to do that was based on our decision to go forward with an expanded notion of pay equity which includes a proxy comparison for pay equity. That proxy comparison will be available for everyone who works in the child care sector.

Our support for non-profit care and our continuing decision to put our dollars there made us want to move ahead quickly with our grant to the non-profit sector in that regard. For-profit operators will be in the same position that non-profit operators are in in terms of the whole pay equity picture. There is no reason to assume that women who work in the for-profit sector should not expect to get the same level of pay eventually. There is no doubt that it will be a financial burden to those for-profit sector operators, and we are saying that as part of their business plan when they begin, they will have to take into account their responsibility to meet pay equity guidelines.

At the present time there is, on average, quite a gap in salary between the for-profit sector and the non-profit sector. We recognize that this creates difficulties for the for-profit sector in attracting and retaining staff. It is another reason we have decided to put our emphasis on the non-profit sector, so that we can ensure that the salaries offered to those who are looking after our children reflect the



value we place on those children and that we are doing so in a responsible way that reflects our commitment to equity for women.

I thank you for the opportunity to make those opening statements. I would be very happy to answer any questions.

**The Acting Chair (Mr Mahoney):** Before we go to questions, I think we will have a response from the official opposition and the third party.

**Ms Poole:** I am very pleased, as the critic for women's issues for the Liberal caucus, to have an opportunity to respond to the minister's comments.

The reason we put forward standing order 123 is because of our deep concern about the minister's announcement of December 2, 1991, an announcement that was made following a decision made, I assume, in the dead of night, since there was no consultation and no warning that it was coming. There appear to have been no impact studies, or, if there have been, they were not released by the ministry. What has happened is that we have far more questions than answers resulting from this policy.

The minister announced that \$75 million would be targeted over the next five years to converting independent, private sector child care centres to non-profit. The problem is that this \$75 million did not create one more space. The \$75 million will not create one more subsidy. The \$75 million will certainly not lower parental fees. A massive infusion of moneys into the child care sector is certainly welcome, but I question the minister's priority in choosing to use it to convert independent, private sector child care centres, particularly because the minister says that the concern is not quality. If the minister had said the concern was quality and could back that up with statistics and facts, then perhaps there would be merit, but she said no, it is because it is spending of public dollars and there has to be accountability.

The minister has released a public consultation paper. Unfortunately, the consultation paper came out several months after the minister had made her decision. Granted, there are many more decisions to be made in child care, but one of the most controversial has already been made.

The minister has said and acknowledged that the contribution of the private sector has been great. If this is the case, I fail to see how she cannot acknowledge that this announcement will put a real squeeze on private sector child care. She has said no, it is a misunderstanding, that funds for expansion will be only in the non-profit sector and that is government policy. But I say that this was the previous government's policy. If that was simply it, there would be no change in policy. Since 1987, expansion has been in the non-profit sector. But what her announcement has also said is that the private sector child care centres will not receive the wage enhancements other than to maintain the previous levels, and that they will not receive the new subsidies.

1040

What happens in the event that you have three children in the family and the first child is in private sector child care? Sure, that subsidy will be continued, but what about those other two children coming into the system? Does

that mean the parents are going to have to split their children? What is happening to parental choice? The squeeze is definitely going to be put on private sector child care.

When you talked about private sector child care workers' wages, I could not believe the lack of logic that said, "There's already quite a gap; therefore we're going to create more of a gap." Is this your idea, Minister, of pay equity for women, that some women should have it but other women should not? In private sector child care it is primarily women operators and it is primarily women child care workers, and they are the ones having a major impact through your announcement.

I am very pleased that in the Liberal caucus today we have Yvonne O'Neill, critic for Community and Social Services, and Steve Mahoney, our critic for small business, who are equally concerned with the announcement you have made and who will be adding their particular expertise to this debate. We have many questions we are hoping the minister and the ministry can answer, because so far those answers have not been forthcoming.

**Mr Jackson:** There is a lot that I would like to say, and certainly the minister knows the views of my caucus and mine personally; we have had occasion to discuss them briefly. But at the outset let me thank the committee for seeing this as a sufficient priority that it occur at a very sensitive and important time not only for this province's budget but for the future of day care in our province.

I want to compliment the minister for her new language, her new use of buzzwords. To start up this presentation by saying she is not interfering with independence I personally find offensive, but I respect the minister's right to change the buzzwords to prepare for what municipalities are telling her, that her plan is fraught with fiscal irresponsibility. It is a social experiment of the worst order that we have seen in this province. Certain communist countries have taken over businesses.

**Mr Perruzza:** Oh.

**Mr Bisson:** Are we allowed to laugh?

**The Chair:** Order. Mr Jackson.

**Mr Jackson:** I apologize for my reference to the takeover of small business in eastern bloc countries; however, you cannot take away the public's perception that this is in fact what you are doing. I respect the Chair's rule, but that does not dissipate what the average citizen is telling us in polling, what the average parent is telling us, what municipalities now by resolution are trying to say to the government.

We will disagree on this, and I respect the fact that you have a certain intellectual fervour attached to your commitment in this regard and that surfaces rarely in politics. Certainly we have seen the government capitulate to British Gas interests when you drew a line. We saw you capitulate to insurance companies, many of them American, when you drew a line. Yet when you drew a line on businesses that are predominantly operated by women, when the employees are almost 100% women, when the purchasers of these services are predominantly women, you say, "On this we are standing." This causes some mixed messages and mixed concerns on the part of the community, and that is probably one of the reasons we are here: to



discuss the true intention and to peel away the truth of what the government's real plan is.

In the few more moments that I have remaining, I want to take some of your comments and try to get a better handle on them. You talked about accountability, and yet you glossed over that. Nowhere do you reference those non-profit centres that are in fiscal difficulty. You put before this committee, not to replay your words directly, that the scrutiny by and accountability to the public is essential—and this is for financial as well as for program matters—yet we cannot get a clear picture from your ministry of how many non-profit centres are in financial difficulty. In my view having a clear handle on that would be your responsibility as a minister.

Social engineering aside, by simply being a minister of the crown you have a responsibility where taxpayer dollars are being spent for you personally and for your staff to be accountable, yet nowhere have we been able to secure from you some clear sense of the centres that are in fiscal difficulty. In your surprise announcement you indicated you could put a \$10-million figure on it, but then when we ask you what you base it on you say you do not have stats and that you do not keep stats. That contradiction is important. Perhaps you should be given an opportunity to clarify that.

It is abundantly clear, as we listen carefully to the language you are now using, that independent centres do not have a hope of surviving, given the multitude of conditions you are going to put on them: no public funding and mandatory imposing of pay equity plans, which is what your reference really was to your commitment to pay equity for the private centres. You are really talking about your government edict but not the fact that financial plans would show that if there is no money, then you are going to take their licence away from them.

It is interesting that it is not on the basis of whether they are safe or whether the children are getting adequate program. Ultimately it boils down to the trigger on this whole process, which was that your government made an offensive decision to say that women who work in private centres are second-class employees and do not deserve even the kind of marginal support of funding. If you can accept the concept that the direct operating grant is a partial contribution, you cannot even embrace the notion that those women workers are important enough that you will embrace a partial pay equity plan in order that those jobs survive.

The one that really sticks in me on behalf of labour is your reference—you start off by saying that parents should have transferability with their child if they move from one community to the other. Then you closed that sentence—Hansard will corroborate this, of course; it was all in the same sentence—with “in employment equity.”

What is it? Are we talking about portability of a child's right to access to a subsidized space and the parents' right not to be interrupted, or are we saying that employees who lose their jobs in one area can resurface in Ottawa because their family plans cause them to move or the centre closes down and their employment equity rights are upheld and

they can then maintain their seniority and they can still transfer?

The way you presented that in your opening statement caused some concern to me. If you say women workers have absolutely no rights in this process, that their seniority is out the door, that their years of experience are out the door and that concern for matching them in comparable situations is all out the door, then it would be helpful to this committee if you would explain that as part of it.

I was pleased to hear you saying that quality is not an issue. I want to thank you for that because I certainly agree with that. Most of the studies are American and from other provinces. If there was any substantive issue of examination of quality it was done by the Provincial Auditor, who indicated that matters of accountability strike across all centres in this province and that is one of fiscal accountability. We have yet to see a government address that issue in a meaningful way to ensure that these centres, regardless of their stripe, are being examined for their accountability. If the committee time permits, perhaps we will have an opportunity to ask one or two questions in that area.

You referenced the non-strategic allocation of dollars. You referenced the Liberals' decision to piggyback with the construction of schools. In fact, that has not really been a big issue as much as the issue of where the Ministry of Community and Social Services has been spending the money, and the Richmond Hill case has been used continually.

**Mr Bisson:** On a point of order, Mr Chair: We have an agreement with the Liberal caucus, which introduced the motion, that we would have five-minute introductions by each of the caucuses to be the leads and then we could get into periods, so maybe you can save that for the next part. He has been on about 10 minutes now.

**Mr Jackson:** I would like to thank the official timekeeper for the committee. I will wrap up my comments.

1050

**The Chair:** I noticed you were just about to wind up your time.

**Mr Jackson:** I was. I am on my last page. The minister made some very important statements here and, in fairness, I am trying to confine my remarks to those that emanate from her statement, which is the spirit in which opening comments are done. I would simply like to suggest, as I was in the process of doing, that if you look at the Richmond Hill case there were centres that did not even open, that were built with public funding from the Ministry of Community and Social Services and other ministries. So we still are not seeing evidence of the allocation being done with the same sensitivity to not overbuilding in certain areas, and I would like to see further evidence of what you are doing today rather than being critical of the manner in which the schools were dealt with.

My final point is, to what extent can the minister, please, advise us about her relationship with the Minister of Education on the issue on implementation of junior kindergarten? As you know, there is a series of boards that have served notice to this government that they are going



to fight it. This is a serious matter, given that it constitutes about 50% of the children who are eligible for half-day junior and full-day senior kindergarten.

Since all those boards are articulating a scheme involving Comsoc and centres, whether they are private or non-profit, I very much would like to get a sense from the minister how she is advising the Minister of Education in these matters and how she sees it. There was only a brief reference in your opening statement on this subject, and yet it is a serious matter, given that boards are literally informing the public that they are not going to proceed with something which is an approved policy direction for this province.

So on those points, I would like to thank the minister and her policy adviser for their presence, and I look forward to questioning and the full committee hearing.

**The Chair:** With the committee's approval, I will do the questioning in rotation with each caucus having 15 minutes, and then we will divide the remaining time.

**Mr Mahoney:** The Tories just used part of theirs.

**The Chair:** That occurred to me somewhat.

**Mrs Y. O'Neill:** There are so many questions. I would like to try to be specific, if I could. A very brief question, first of all. There has been in the past a relatively standing committee between the Ministry of Education and the Ministry of Community and Social Services on the day care issue. Is that committee of ministry bureaucracy and/or ministerial responsibility still intact?

**Hon Mrs Boyd:** There is an interministerial committee that looks at all the children's services that is indeed still intact and very active, and this is one of the issues that we have been talking about, including such projects as Better Beginnings, Better Futures and those sorts of things. But certainly the conjunction between the MCSS responsibilities for child care and the education responsibilities for early childhood education have been part of that discussion.

**Mrs Y. O'Neill:** I am very happy that is the case. I have two questions on the impact of all of your announcements in reference to the issue. The first one is a clarification matter because I really have talked to many operators, even some of the bureaucrats in the larger centres, and there seems to be, at least in their minds and certainly in mine, confusion regarding the commitment you are making to the existing private small business centre. The confusion seems to stem from your talking about a fee here or an allocation of \$31 million that it would cost to bring their staffing up, and if they converted, the \$31 million would be used to ameliorate staffing remuneration.

At the same time, you are suggesting that those in existence and grandfathered to the 1987 status would have some subsidization or some direct grants going on. I guess I would like to know, do they stick at the 1987, 1988, 1989 rates, the direct operating and/or subsidy spot, or is there a phasing out? What is the implementation plan regarding those 1987-criteria people and spots?

**Hon Mrs Boyd:** For the 1987 people who were in receipt of direct operating grants, those direct operating grants were at 50% of the amount that was given to the non-profit sector.

**Mrs Y. O'Neill:** Correct.

**Hon Mrs Boyd:** My understanding of the decision is that we continue for those centres to grandparent them at 50% of the direct operating grant.

**Mrs Y. O'Neill:** That will continue to progress under the plan you have initiated?

**Hon Mrs Boyd:** To the point of conversion. The \$31 million is to do the other 50% of the direct operating grant plus the salary enhancement for those operations that decide to convert.

**Mrs Y. O'Neill:** You talked very generally about the communities across the province, and there are certainly inequities in provision of child care; we are all very aware of those. What kind of studies are you engaged in now, looking at the building of new schools as one of the components or any other components you may want to assess? Beyond Ottawa and Toronto, where we know the data is collected basically at the local level, what kind of studies do you have going province-wide?

**Hon Mrs Boyd:** There has been a fair amount of work done by the ministry at the area office level in the past, but very little done in the sensitive way we need for strategic planning. We are very clear about that. We know from the area office level what the general situation is for the different areas, but we know that the extent to which that leaves areas that have no child care and those that do is a problem. Part of our work on the child care consultation as we go out to communities all over the province is to gather that information directly from community members. We know that a lot of people who will want to speak are people who are providers: municipalities that are concerned about the way it is provided and parents who have either been able to get child care or not been able to get child care. So that will be put together in a much more sensitive way of gathering data. That is what we need.

As you are aware, because of the highly decentralized nature of our ministry, because of the way in which this has been a shared jurisdictional and funding issue with municipalities, there is very great unevenness in the way child care policies and frankly other transfer payment policies have been done across the province. Part of what we want to do in this area, since we see this as an issue of equity for both parents and children, is to work through this consultation process in a much more sensitive gathering of data, to be able to direct our funding much more strategically and enable us to be sure there is a much greater equity of provision.

Mr Jackson was curious as to what I meant about employment equity. What I am saying is that increasingly people who work in this province are finding that in order to get work they need to be mobile. Parents of children need to be sure that if they get a job in another part of the province there is going to be the social infrastructure there to support them and their children in order for them to go and seek work. What I am saying is that part of the equity issue, part of the equity framework we need to look at in this province, is ensuring to the extent we can that those kinds of services are equitably available.



That is not to say we do not have real problems and will not continue to have real problems around the way we offer child care, given the difference in the number of our population and the distances people have to travel. That is why we also know we may need to look at the regulations in the Day Nurseries Act, to look at ways to be more flexible in the provision of that care. There have been a number of interesting projects going on that have shown us ways in which, if we were just a little bit more flexible in terms of the delivery mode that we allowed, we would have much greater access to child care. We believe we need to do all those things to retool the system, because it is not a system now. If we are going to build a system that is going to ensure equity, then we need to do all those things first.

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**Mrs Y. O'Neill:** I think that is why we found the announcement on December 2 so difficult, because we know how much more data needs to be gathered and we know this really does not add to the system. It may focus on a part of the system. I wish you well in the work you are doing. I somehow wish it could have been done this time last year, before such a strong commitment was made to go in this one direction with such a large amount of money and with no new spaces. In any case, we will continue the discussion.

**Mr Mahoney:** My questions would evolve a little more directly around the concept of a private day care centre being a small business. It seems to me the value of the private day care centre has virtually been eliminated by the announcement being dropped on the province. Any kind of goodwill this operator had built up, any sweat equity, if you like, or whatever term you want to put to it, in your best-case scenario would have been severely jeopardized. In my view, it would have been eliminated, not unlike what Bill 4 did to some of the apartment buildings and those dastardly landlords who sit around the province gouging people, according to that ministry.

Not to get off on that, I am concerned about the fact that we have private day care operations operating in good faith, knowing the rules of the game, with a business value, and you call them for-profit centres. That is all I hear coming from you and your colleagues. I guess my question would be, could you describe the types of operators that exist here? Are they large corporate citizens who simply opened a chain of day care centres to make millions of dollars or are they indeed local community women, in most cases, who found they were interested in establishing their career path in the day care field and hoped they would be able to augment their family income? Hopefully, they would be able to secure some kind of future. Is there prime concern for the word "for-profit" or is it day care for kids?

**Hon Mrs Boyd:** I do not think that is a fair characterization in terms of the choice. There are, in answer to your question, a whole range of different for-profit operations. There are indeed some large chains. There are some smaller chains where people have two or three outlets. The majority of the operators are single location or double loca-

tion operators. Some indeed are operated by women, some are operated by families, some are operated by numbered corporations. The whole range is there and basically it certainly pulls at people's heartstrings to characterize it in one way or another, but the whole range of operations is there.

The interesting part of your question is around the issue of for-profit. One of the things that has always fascinated me in this discussion is the insistence by many people in the commercial sector that they are not in business to make money. In fact I have been engaged in public debates with private operators who have said very clearly, "If I were in this business to make money, I would not be in this business," and so on.

I would say to you that part of what we are saying is that we recognize there are not a lot of dollars to be made in the child care field. What we are trying to do through our conversion policy is to offer some equity to those people who have indeed done exactly what you described, put their work and their effort into building child care, and to say to them: "Given the situation of child care right now, the opportunity to make profit is certainly low. If you convert—and we can make some adjustment for the investment that you've put in—and you become employed at a decent salary, which is what we all want to see happen for child care operators, you may be in a better position." Some operators are very convinced by that. Indeed, we are seeing an increasing number—we saw an increasing number under the Liberal process—wanting to do that and seeing that as a more viable way.

The issue is whether you have to have a board that is going to make policy. This is where the ideological differences come in. Those of us who believe the care of vulnerable children ought to have a good deal of input from their parents and from communities, that this is an area where the operation of a board lends strength, safety and security to the operation for children, would say this is the only way that sort of care ought to be offered.

**Mr Mahoney:** Minister, if I could stop you there, please. I think you attempted to answer the question, but a couple of things you said lead to subsequent questions. On the comment about people saying they are not in business to make money, I agree with you. It is just like someone suggesting you go into business simply to create jobs.

Interjection.

**Mr Mahoney:** Yes, she said that.

**Mrs Cunningham:** I have not heard anything like that.

**Mr Mahoney:** She said that some people have claimed they are not in this business to make money. It is a little bit like people in politics who say they are not here to make money, that if they wanted to make money, they would do something else.

**Mr Perruzza:** Expand on that one a little bit, Steve.

**Mr Mahoney:** You are making more than you ever made in your life, so why not just be quiet for a minute.

**The Chair:** You have about 30 seconds, Mr Mahoney.



**Mr Mahoney:** In essence, I think what you said sums it up. You said you want to convert these people into government employees working in non-profit centres and take away their opportunity to be independent thinkers and operators running a small business. You said they would be better off making a salary. You have said you want to give them some kind of equity, yet you have not put forth a plan that says what you are prepared to pay them for their equity. Indeed, you are destroying their equity by taking the value out of their small business. It is so painfully clear, if you would only be open and honest about it, that you are totally destroying the private sector part of an overall business that is currently—and you say it is not a system. Of course it is a system. It is a system of non-profit and a system of privately run day care centres around the province. You want to take it over and put it all under the state. Why do you not say that and tell these people you are prepared to offer them X amount of money for their businesses and X amount of money for their jobs if they want to continue working for you?

**Hon Mrs Boyd:** That is absolutely untrue. Our provision of child care is through transfer payment agencies. Some of those are Indian bands, some of those are municipalities and many of those are individual transfer payment agencies run by community boards. They are the employer. The government is not the employer and has no intention of being the employer. What we are saying is that the independence of those community boards is very precious to those communities, to the parents and to some of the staff who may participate on them. In fact, that is an independence which also takes into account the community good, not simply the views of the proprietor. We are saying that is a much more appropriate way around it.

**Mr Mahoney:** Give the independent operator an opportunity to set up a community board, Minister. Why do you not do that?

**Hon Mrs Boyd:** That is exactly the conversion—

**Mr Mahoney:** No, you are converting them to non-profit. That is what you are doing.

**The Chair:** Order. The minister has the floor.

**Hon Mrs Boyd:** That is exactly what the conversion process is. The conversion process is enabling them to get together a community board, to participate with their community and to—

**Mr Mahoney:** As long as they go out of business first.

**Mr Perruzza:** How much do you make?

**Mrs Cunningham:** How much do you make, Tony?

**Mr Perruzza:** I want to know how much he makes.

**The Chair:** Mrs Cunningham.

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**Mrs Cunningham:** Thank you, Mr Chairman. I was interested in your words, “the government will not be the employer.” I guess my question is this: How do you see child care being delivered 10 years from now, given the direction that the government is moving in? What is your vision for 10 years from now for child care?

**Hon Mrs Boyd:** My own vision?

**Mrs Cunningham:** Your government’s vision—well, yours, I would expect, or your government’s. I would expect that they were consistent.

**Hon Mrs Boyd:** I would say, Dianne, that it is premature for us to be making that statement. We are out in consultation, and one of the issues there is being very clear about the different models. There was a model put forward by the select committee on education which came down very heavily in favour of a child care system that was operated in a similar way to the education system. My own personal work in the field has always been through individual independent non-profit corporations, where there is a much more direct input by parents and by community members than there can be in the school system. I personally would have some concerns, if we were simply to emulate the school system as it is now, that the kind of parental involvement that is most effective in terms of early childhood education might not be there.

I think it is going to be important for us to see, in terms of the work that has been done on the early years through the Ministry of Education and the information that we get back from our communities about the provision of child care—and we have said in the paper very clearly that those two things need to come together. We need to get a sense of where the people of the province want to go. We know the people of the province do not want to go to a system of continuing to provide—

**Mrs Cunningham:** Let me interrupt, Minister, because my question was, where do you see it 10 years from now, and what you are chatting about is what you and I both agree with anyway. It is all process, and it should have happened 10 years ago. But given what you said today, I can clearly understand that you talked about three things: You said the government will not be the employer. My view is, given that it is moving in this direction, the government will be the employer, it will be universal paid-by-the-public child care, and I say that for two reasons. You talked about grandfathering or grandmothering or something—

**Hon Mrs Boyd:** Grandparenting.

**Mrs Cunningham:** —grandparenting the private sector now. They cannot expand, because if they want more subsidized spaces, they are grandparented at 16 or 20 or 25, so they cannot expand. No new ones can start. Over a period of time, since it is a very stressful business, in my view, and it is not long-term for most operators, they will be phased out.

The other analogy that was interesting to me was how the private schools started up in Ontario. The view of the private schools, if you are talking 50, 60, 70 years ago—it was a very long time ago, and I can only say that when public education came into Ontario, there was a very clear policy stating that for a certain age group—six years and over—there would be compulsory education. Now, I do not see this government being gutsy enough to say, “We want universal, paid child care for three- and four-year-olds,” but in my view, that is what you want, and that is where you will be 10 years from now.



The one question I have, to do with the private centres right now, is this: You said there was no requirement for the private sector to have parental input, a board of directors. Now, this is a very important point, because it really is the only difference, in my view, between the non-profit that have the boards—by the way, they can fire the owners if they have the boards; that is what has happened, and that is why the profit people do not want to go that way, if you want to use the word “profit.” I do not like that word particularly, because I do not think there is a lot of profit. The auditors can certainly go in and look at any of these private agencies to see what kind of profit they make. As a matter of fact, right now they cannot get grants if they have shown any profit. They will not get the subsidized care. I know, because I have audited those books for the government of Ontario in the past.

So my question is this: If the single requirement is that you want a parental board, why do you not write it into the regulations and say that the non-profit sector shall have a parental board that will have impact, to the best of the decision of the ministry, which, by the way, licenses the non-profits and the profits. All you have to do is say they must have a board of directors. The only difference is, they cannot fire the owner. Now, that is how you solve the problem. We do not need all this public consultation if that is your concern.

As you went through your opening remarks, that was the only thing I noted as you pointing down and saying, “We do not want private sector operators.” So answer my question. Why do you not just have a requirement within the regulations saying no subsidized spaces if you do not have a board of parents? Why do you not do that?

**Hon Mrs Boyd:** I find it fascinating that the party that purports to protect small business is talking about a small business person putting his investment into an operation and then having to be forced by government to have a board that could do all the running of that operation except the firing of the person.

**Mrs Cunningham:** Yes. They have to open their books now.

**Mr Mahoney:** It is better than being put out of business.

**Hon Mrs Boyd:** That is not going to be an appropriate view for a lot of those people.

**Mrs Cunningham:** Many of them do it now without regulations.

**Hon Mrs Boyd:** One of the differences between them is the profit. There is profit allowed for for-profit centres. Let us not be foolish about this. I can quite see that the profit margin is quite low—

**Mrs Cunningham:** Very low.

**Hon Mrs Boyd:** —but people would not be fighting to maintain these businesses if there was no profit involved in it at all. So let's not be foolish about that. That is a big difference between the two operations.

**Mrs Cunningham:** On a point of privilege, Mr Chairman: I have never, nor has anybody, ever come before any committee of this Legislative Assembly and said that they are not out to make a profit, even though it is a small

amount of money. Child care books are audited. In fact, you could not even get the direct operating grants in the private sector without opening your books. I remember the minister at the time, Sweeney, answering my question in the House, saying nobody who did not open their books would get the direct operating grants.

The reason I am being so forceful in this discussion is that I do not understand how you can sit here and say that over a period of time, in the next few weeks and years and months, we will take away 33,000 spaces in the private sector at a time when Ontario cannot afford to build those up right now. The timing could not be worse.

**Hon Mrs Boyd:** We are not saying we are taking those spaces out. We are offering those operators the opportunity to convert to non-profit and saying that we will limit the expansion of the for-profit sector in the future.

**Mrs Cunningham:** Given the comment by the minister that she could not sit here and listen to somebody from my party talk about opening up your books and having a board of directors made up of parents in a for-profit centre, I would say to her that the only difference would be—and I think you and I agree—that in the end the board of directors cannot take over the business. That is the only difference. If the ministry does not like what is happening in that centre because of the board of directors' recommendations, it can just say, “You're not going to get any more subsidized spaces.” That is what they can say. The argument is so—it is irresponsible to—

**Hon Mrs Boyd:** But we are already saying that they will not get any more spaces.

**Mrs Cunningham:** You are phasing them out.

**Hon Mrs Boyd:** We are not saying that we are phasing them out in that sense.

**Mrs Cunningham:** You are grandmothering or grandparenting them out.

**Mr Bisson:** Mr Chair, can we have a question and an answer rather than badgering? I think it would be a little bit more interesting.

**Mrs Cunningham:** Oh, be quiet. This is important questioning. If you do not like the way I am questioning, then just plug your ears. This minister is quite capable of taking care of herself. She is the wrong one for you to worry about.

**The Chair:** The question is to the minister.

**Mrs Cunningham:** Go for it, Marion. Let's hear the answer.

**Hon Mrs Boyd:** We need to be very, very clear that we could simply have gone ahead and announced our down payment on pay equity and continued with the announcement of that for the non-profit sector only without the effort to allow conversion. One of the things that is very important for you to understand and for the province to understand is that it would have been possible for us not to have put these dollars into the conversion, not to have been making the attempt to maintain the spaces, to maintain the employment of the employees and to provide some compensation for equity people had put into this

sector. What we are clearly attempting to do is to do both at the same time.

**Mrs Cunningham:** On the employment equity, I can only say that I have been working in the child care sector for some 15 years of my life and just 10 years ago the average salary of a child care worker in Ontario was less than \$10,000. My understanding is that it is right up there now, getting better, so employment equity has been achieved over the last decade. We have a further position to go, but are making significant strides, both in educating the workers and in paying them.

The one thing I would like to thank you for is to clarify before the public that licensed child care centres in this province are both private and public. This argument I keep reading about quality child care in the private sector not being sufficient is an old argument that was good for American institutions before the 1980s, a long time ago, and has never been significant in Ontario. I thank you for clarifying that because that is not an Ontario argument.

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**Mr Jackson:** I have a couple of quick questions. Minister, could you identify the person on your staff who is responsible for negotiating these conversion programs?

**Hon Mrs Boyd:** The person on the ministry staff who is currently involved in that is a woman named Suzanne Zakoor who is working together with Keith Baird from my office and a reference group of operators from both the private and the non-profit sectors.

**Mr Jackson:** Can you tell me how many agreements your government has struck with independent centres to date?

**Hon Mrs Boyd:** There were some conversions and some sales that were in train at the time the announcement was made. We felt it was very unfair to those operators who had been in process, without any kind of warning, and so those went through. I believe there were under 10. I think that—

**Mr Jackson:** Would you please furnish this committee with the names of those centres and, in rough terms, the terms of the agreements, whether there was an expenditure or whether there was simply consultation or whether there were legal expenses paid? Could you share with the committee for its deliberations—

**Hon Mrs Boyd:** I wonder if I could finish, because I can certainly do that for you, but what—

**Mr Jackson:** In the interests of time, I wish to get on the record—

**The Chair:** Perhaps the minister could complete her response.

**Hon Mrs Boyd:** Yes, I need to finish what I was saying. We put a moratorium on any further conversions pending the outcome of these discussions around how to most strategically place these dollars. We have said very clearly from the beginning we cannot simply convert all operators who come to us saying they want to convert. We have been very clear about that. We have been very clear that we need to plan so that there will be the least disruption to the children and the parents and that child care is

still available to those who need it. So until those decisions are made there will not be any further ones, so there are very few. I can certainly provide you with that.

**Mrs Y. O'Neill:** What is the date of the moratorium, Madam Minister, please?

**Hon Mrs Boyd:** The discussions are ongoing now. We are certainly hoping that by the end of the month we will have the guidelines in the hands of all our area managers and we will be able to proceed in order as those requests strategically come in. The requests have been taken—

**Mr Jackson:** So you do not have a time frame for that? You do not have a specific date, was the question.

**Hon Mrs Boyd:** The 31st and 1st is the next meeting. If the group agrees to the draft guidelines which have been drawn up in consultation with them, we can move with it immediately. If they do not, if we have to adjust it and then go back to them again, it may be another week.

**Mr Jackson:** You will furnish this committee, then, with all and any of those agreements that were struck. Is it also now the government's policy that where a centre is sold, the terms and conditions of the transfer of the DOG grant will be maintained, or is it now the position of the government that the previous understanding of grandfathering, grandparenting, will not be upheld? I understand that decision ultimately sat in the Premier's office for a week and a half and the decision was made. I am waiting for some public utterance of what the policy is.

**Hon Mrs Boyd:** Certainly, as far as I know, the decision was quite clear: that those sales that were in train at the time that the announcement had been made might not have been concluded, but all the specs for the business, all that sort of thing, were based on the DOGs being able to be transferred.

**Mr Jackson:** Correct.

**Hon Mrs Boyd:** That in those cases where that was clearly in train before the announcement, the DOGs went with the sale of the business.

**Mr Jackson:** No, I am talking about the straight sale of a business. I want to clarify that.

**Hon Mrs Boyd:** That is what I am saying. Where the sale was in train before the announcement was made, where it was in process, those DOGs would go with the business automatically. In those cases where that was not the case, subsequent to the announcement, where we had said that we would not, then that was not the case.

**Mr Jackson:** The previous government's grandfathering is no longer a policy—

**Hon Mrs Boyd:** Not in the case of sales, because there has to be a sale of the licence.

**Mr White:** Madam Minister, I was most impressed with your presentation. This is an area that has a great deal of interest for me, but I was disturbed by a number of the comments you made. Basically in my area we have an excellent public service and an excellent for-profit service. My children have enjoyed both of those, but I understand from what you are saying that if my wife was to take a job in London or in Thunder Bay or wherever else in this



province, and of course my children and I would go along with her—

**Mr Bisson:** Hopefully.

**Mr White:** Hopefully. We would not have the guarantee of being able to go to a quality of service for our children that we have in our local community.

**Hon Mrs Boyd:** That is quite true.

**Mr White:** We would not have a predictable public service. We would not have a predictable not-for-profit community-board-run service. For-profit services might be available; we would not know them. But we would not be sure of having a service accessible to us in terms of our direction and our concerns, and responsive or accountable to us as parents.

**Ms Poole:** And you will not after this announcement.

**Mr White:** I am very concerned that we do not have, it seems, in this province either a systematic availability of not-for-profit centres, community-run centres, church-run, municipally run services or, it seems from our discussion, any strong sense of quality, any strong sense of evaluative research into the qualitative aspects of child care that are so essential to us as parents, so essential to us as anchor points in terms of our decisions. I guess that strikes me as being a very profound shortcoming in our system. I know the consultation process that is ongoing will at least partly address that, but what I am further concerned about is that as a ministry yours does not seem to have the capacity to offer any kind of qualitative or evaluative research. Is that right?

**Hon Mrs Boyd:** No, I think you misunderstood me. What I was saying was that any licensed child care in this province needs to meet standards that are regarded, frankly, throughout the world as being very high standards. They may in fact be too rigid standards in order to provide the kind of flexibility of care we need. That is one of the things that are out for consultation. If it is a licensed child care centre, whether it is private or whether it is non-profit community-based, whether it is municipally run, it needs to meet those basic minimum standards, so that in terms of quality, if you are able to find a licensed centre, you can be sure that licensed centre has been inspected, and there are minimum quality standards you can be sure of.

The issue is that the availability of licensed care is very uneven throughout the province because in fact we are at the very beginning stage of building a system of child care. It has built up at very uneven rates, depending on the community activism in certain areas, depending on the entrepreneurial spirit in others, depending on the encouragement of both municipal and provincial officials in certain areas. I certainly would say that in the past the emphasis on child care as a program offered by the ministry has been more enthusiastically embraced in some areas of the province than in others.

One of the issues we are dealing with in our ministry is that the highly decentralized decision-making that is made at the local level in our ministry does give a responsiveness to community desire and need, but it may not provide the consistency across the board. If a community is more concerned, for example, about the provision of care for the

developmentally handicapped and wants to put more of its emphasis there than it does on child care, there is flexibility in the way the funding has been applied.

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We are saying that given the importance of the availability of child care to employment equity in this province for parents who need it and for children who choose it, we need to have a more consistent approach, be more strategic in the spending of our dollars and over the next few years, in those areas where there has not been the building up of the system that we might want, we strategically put some of our dollars in to make sure that is available there.

Right now if someone meets the standards, forms a corporation and is ready to provide, he can get a licence. They may not be able to get a subsidy if there are not dollars available in the municipality which controls the subsidy, but there has been no way to strategically ensure that we are beginning to do that.

Where we are offering startup costs, we are insisting that non-profit groups have feasibility studies, that they have a business plan, that they show that the number of spaces they are planning will be a viable operation and that there is enough need in the community. That is the kind of strategic planning we are just beginning. We are behind many other countries that have been much more active in terms of child care, even though we are probably ahead of any of the other provinces in Canada in terms of how we have gone with child care.

**Mr White:** The issue of the direct operating grants I find a matter of some strong concern. My understanding is that the direct operating grants, the millions of dollars that are poured into for-profit centres—I am not quite sure what the rationale behind that is—were set up as a result of federal government policies and there would be a sharing of those costs on the basis of a national child care strategy. The federal government has proven the viability of its word and commitment to the youth and social programs of our nation by sabotaging and totally gutting those programs. In the meantime, despite that, we have preserved those grants.

We have been spending at this point literally close to \$100 million dollars in grants to for-profit centres on the basis of a federal government promise. They have gutted their promise. You, Minister, very clearly stated a few moments ago that you were intending to continue that at least in the short run, while the federal government has gutted its promise, its commitment to child care centres, whether for-profit or not-for-profit. It seems somewhat similar to the situation with social welfare, with hospitals, with the whole social network we are faced with: We are picking up the tab for the federal government's failures.

**Mrs Cunningham:** Where is the 60% funding for education, Drummond?

**The Chair:** Mrs Cunningham.

**Mrs Cunningham:** I am just making a point.

**The Chair:** Mr White, continue.

Interjections.

**The Chair:** Mrs Cunningham, Mr Perruzza.



**Mr White:** I am just concerned that we are continuing to match our half while the federal government has of course gutted its commitment and responsibility.

**Hon Mrs Boyd:** I think it is an extremely important question, because the reality is that in 1987 the previous government clearly made the decision that it had a preference for non-profit. They clearly said that only those centres that were operating at that point would be eligible for the direct operating grant. You are right, they did assume—we all did at that point—that there was some truth to the promise that the federal government had made around child care. That promise has not been kept, you are quite right. Those dollars have not come.

What is more serious for us in this province is that child care is funded under the Canada assistance plan. The Canada assistance plan has been capped at a 5% increase at least until 1995. What that means is that we are now picking up 100-cent dollars for those direct operating grants. You are quite right, we have made a decision, and it is that balancing act whether we in fact download and ignore our grandparenting responsibility to those operators who in good faith have continued to provide care. We are saying yes, we are spending 100-cent dollars on this, but given the good faith those operators have put in, the care they provide and the need we have to maintain child care in the province, yes, we will continue to pay that for those. But we will not spend any more 100-cent public dollars in the for-profit sector. We do not think that is appropriate at a time of close resources. But we also do see some responsibility to operators who have provided service and continue to provide service to the children of Ontario.

**Ms Harrington:** I would like to get to the question of conversion. I think this is the most important process. I want to first of all mention Niagara Falls. We do have some very good private care centres which have been operating for quite some time. We rely on them very much. I have spoken to these people. These are people who certainly care about their children and their business. What we have come to realize is that there really is, as you have mentioned, no profit in this business. When you are trying to pay adequate wages and you are trying to have reasonable day care costs, there is nothing there.

If no announcement had been made these businesses would have been totally in limbo and would be facing an uncertain future. After some due consideration by the business operators, it is difficult at first to reluctantly try to understand what is happening. But I believe they are coming to an understanding—at least some I have talked to—that what we are doing is giving a clear direction and we are also giving assistance out of this morass where there has been no answer.

This process is not without a great deal of difficulty; I have difficulty with it as well. What I need and what I would like to ask you for now is more clarification on this conversion process, because I am obligated to these private day care operators in my city and region to make sure that day care is available. What I would like to know is if there is a time line or schedule for this year as to how things are going to proceed. They are also very concerned about the

individual needs of each centre and how they are going to be addressed. I know there is no easy answer; at least I cannot think of any. If you could give me a little more clarification, I would appreciate it.

**Hon Mrs Boyd:** What we are doing through the reference group is setting up the guidelines that will be used by every area office to work with the private sector operators who have indicated they want to convert, with those non-profit centres that may wish to either take on some of the tasks that have been done by the for-profit sector or new corporations that have formed out of the parents and the community who want to assist a for-profit operator to convert. There will be requirements for them to meet in terms of the board of directors and their responsibilities. That will be done in one part.

The other part of that is to look at the availability of child care, to look at the viability of child care within an area. We know that a number of centres across the province, both for-profit and non-profit, have failed because of the downturn in enrolments because of the recession and we know that is causing a great shift, as it is in other businesses in the province. We need to be sure that any operations we put conversion dollars into are going to be viable operations, that they are licensed to look after a number of children in the combinations of numbers that are going to ensure they will be viable and that the enrolment base is there for continued viability.

We need to look at the projections of children in a neighbourhood, for example, and if what we are seeing is an age bump right now that is going through and there are not going to be a lot of children in that neighbourhood, we may not have that as a high priority for conversion. There will be a way in which those priorities are set and the dollars are strategically placed to maintain child care where it is most needed and where we can be sure of viable operations.

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**Ms Harrington:** I am hearing from the employees of the private sector day care that they understand where we are going, that we are trying to get them equal in pay, but their concern is all this studying and the time lines and the consideration. They do not know when it is going to come down. Is it going to be within a year? These employees are worried.

**Hon Mrs Boyd:** The pay equity amendments have been introduced into the Legislature. We hope they will be coming to the Legislature for second and third reading in the next session. A great deal will depend on whether or not those go through and whether we can proceed with our plans for proxy-based pay equity plans.

If the legislation is passed and we can move ahead with that, then that would go more quickly than if it were delayed. That is part of the aspect here. The down payment for the non-profit sector was based on the commitment made in January 1991 that we would move ahead with that as a signal to the child care sector that we were proceeding with pay equity.

**Ms Harrington:** The problem they are also concerned about is the conversion.



**The Chair:** Each caucus will have 10 minutes in the next round.

**Ms Poole:** I would like to explore the rationale for the sudden announcement made on December 2, 1991. We know part of the rationale behind it and the fact that it was announced at the Ontario Coalition for Better Daycare's annual meeting. They were very upset over the fact that the government had delayed implementation of the announcement in January 1991 of the wage enhancement. Certainly part of this announcement was to appease that, but it appears there was no planning, there was no consultation and if there are impact studies, we certainly are not aware of them.

Could you please give us the story behind this decision? What kind of statistics did you base this decision on? What was the anticipated number of closures? What was the anticipated number of workers from the private centres who would lose their jobs because of it? How did you reach the target number of 50% that would be allowed to convert? How did you feel that accountability would be increased by this decision, particularly in light of the fact that the non-profit sector, which already operates with the parental boards, was estimated by you to be \$10 million in financial jeopardy that would have to be rectified?

I would like to know how many non-profit agencies are in debt and were in debt, and how many were in receivership. Perhaps you could start along that line, specific statistics, and whatever you do not have available now I would officially request to the committee that these statistics be made available hopefully by the end of today so that we have them for our deliberations.

**Hon Mrs Boyd:** I will be very frank. When we took over the government, we were shocked at the lack of reliable statistics that really gave us this sense. It is one of the reasons we say it was not a system. We were pouring, as a province, a good deal of money into this area, but there was not a way in which those statistics were gathered that satisfied us, and we began as soon as possible under the previous minister to gather those statistics. We have them by region of the province. We know the centres that look as though they are having difficulty, we know how many have closed by region on a quarterly basis. We do have those statistics and those were available to us in making our decision.

We also know that those statistics are somewhat skewed by the current economic crisis. Child care is very sensitive to job loss, because when parents lose their jobs, of course they are not eligible for subsidy. We are seeing a great dislocation in the child care system right now because of vacancies caused by the parental loss of jobs, and of course the instability that creates for children at the same time is of great concern to us. The whole system is very much in flux. We can give you the figures we have, but we also know, and the child care sector has been clear in all the work it has done with us over the last year, that those figures may be somewhat unreliable because of the great flux that it is in.

When you say there has been no consultation, I just shake my head. I cannot imagine how you can make that

statement. There was a great deal of consultation during all the hearings of the select committee on education around this whole area of child care. You yourself were part of those discussions.

**Ms Poole:** Minister, I chaired the select committee on education. We did not address the private-versus-non-profit issue.

**Hon Mrs Boyd:** There were many who tried to at that time, and many of the people who testified talked about that as a real issue in terms of child care.

**Mr Mahoney:** It was not a mandate of that committee. That is nonsense.

**The Chair:** The minister has the floor.

**Ms Poole:** It was the select committee on education, Minister, not the select committee on child care.

**Hon Mrs Boyd:** When the previous government came out with its discussion paper *New Directions for Child Care* there was a further round of consultations. When the federal government was doing all its work in terms of child care, there was much discussion that went on, many representations made by child care groups on both sides of this issue in the province, and the discussion between profit and non-profit certainly was one of the issues that was discussed in that area.

When the previous minister made her announcement about the down payment on pay equity in January 1991 it raised a tremendous flutter, and over the year people in the ministry at the area level, the previous minister, myself and many members of our government had occasion to meet with many members of the child care community, both for-profit and non-profit, within their constituencies, within groups as delegations. There was a great deal of consultation that went on, but one of the issues is that when we do not agree with—

**Ms Poole:** Excuse me for interrupting, but we are getting into generalities which are not that helpful.

**Hon Mrs Boyd:** You said there was no consultation. There was a great deal of consultation.

**Ms Poole:** Minister, will you specifically answer this question: Was there consultation with the private sector groups or the non-profit sector groups that you met with where you discussed this policy that you announced on December 2, 1991? Was that policy discussed?

**Hon Mrs Boyd:** I personally, as a member, as an MPP, met with for-profit groups and made it very clear that we favoured the for-profit sector, that we did not want to act in a way that was going to be destructive of those who had already been grandparented under the previous Liberal plan, but that we had real concerns about our ability to continue to support and build a child care system unless we had the focus of public funds in the public sector. I was very frank about that.

I cannot speak to the discussions the previous minister had with the various groups, although I understand that she met with them. I cannot speak to that, but I know that I personally have been very clear and that in terms of public statements by our government we have been very clear, both previous to the election and since the election, that we



want to focus public funding in the non-profit sector. That has been a clear focus of our government.

**Ms Poole:** It was a clear focus of the previous Liberal government to focus on the non-profit sector and expansion, but that is certainly not the policy you are dealing with right now. You are dealing with a policy that will virtually guarantee the elimination of the private sector in this province, and that is a very deep difference. This will not go to legislation. There will be no opportunity to debate this other than in this particular committee, and we hear that you, as a private MPP, made your views known and that was the consultation. That is unacceptable.

Do you have specific statistics that would lead you to make estimates of how many closures would be anticipated, how many workers would be out of jobs in the private sector, and how did you determine the 50% quota that you were allowed to convert?

**Hon Mrs Boyd:** Part of the work that was done within the ministry was based on our experience over the last number of years in terms of the change and just the regular erosion, if you wish to call it that, of the for-profit sector. There had been quite a change, almost a 10% shift from the for-profit into the non-profit sector at that time. Some of those were closures, some of them were conversions, some of them were purchases. There were a number of different ways in which those happened since 1987, and the experience of that was calculated based on what we thought would likely happen, given the determination that was being expressed by many private operators that they would never accept conversion, that they would rather go it alone and from an ideological and educational point of view felt that was the appropriate way.

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That was how those decisions were made. We based it on average costs we had seen for the kind of startup of child care we had been funding in different areas, and it was our best guess. The 50% figure was decided upon simply because of the fiscal impossibility, under the circumstances, of our being able to guarantee that we would be able to convert all of those operations.

The other factor that is not in there is obviously, because of the strategic placing of the funds, whether in fact the decisions private operators make may be different from what we assume they will make, given the previous picture. But there were certainly some data on which we were basing those decisions, and again I would caution you that the one thing we could not take into account over that period of time was the effect of the recession and the lack of enrolment in the centres, because that has been an added factor over the last few months that could not be taken into account in any orderly way.

**Ms Poole:** Might I request that the committee have those statistics that the ministry has available? Might I make that official request for the committee?

**Mr Mahoney:** But it was all a guess.

**Hon Mrs Boyd:** Any time one does predictions around this sort of thing, there is a lot of guessing involved, but it is an educated guess, based on the experience of the past.

**Mr Mahoney:** So it is government by best guessing. Is that what the Treasurer did too?

**The Chair:** Mrs Poole has made a request that the committee officially ask for the information. Is that what I understand, Mrs Poole?

**Ms Poole:** That is right, and any impact studies that were available to the government.

**Mr Mahoney:** And who made the guess.

**Ms Poole:** The best guess.

**The Chair:** We will make that request. Mrs Cunningham, your caucus has 10 minutes.

Interjection.

**Mrs Cunningham:** My colleague over here talks about making work, and I would suggest that is exactly what the government is doing with its paper called Child Care Reform in Ontario: Setting the Stage. Most of the questions in this report have already been answered many, many times, but it is true that there has not been a public consultation either around pre-kindergarten or child care or the interaction of the role in Ontario, I would say, since 1978, the last public consultation that went out.

I will also say that there were three key questions left with the Liberal government in its child care paper. First of all, the role of the school system was left up for public consultation. I am hoping you will get a lot of it. It is not underlined here. It is part of it. It is a very small part, the very last topic, on page 35 of a 37-page report, so I hope it will be a major one. The other one was the role of private home child care and whether or not we could move forward in licensing the unlicensed homes, which was a very considerable concern, and the third one, one that has been on all three government agendas now, was the review of the Day Nurseries Act. Specifically, those are the three things I think the government should be moving forward on. It would be an evolution, in my view, from what we have already done. To go back with this consultation paper, I hope you will come out with some other paper to support this, because this one is far too broad.

When you talk about system management, I would like to ask the minister this: What role should the provincial government play in the planning and management of child care in Ontario? In my view, do you not think you have already told the public what the provincial government will be doing? Why go out and ask them now?

**Hon Mrs Boyd:** There is still a great deal of discussion, particularly at the municipal level, about what the role of municipalities ought to be. Where municipalities have been enthusiastic supporters of child care, we see a great support for municipalities to continue to be jurisdictionally—

**Mrs Cunningham:** There was a report done over the last three years with the Liberal government where the municipalities clearly stated that they do not want to be part of child care. We had a three-year consultation—

**Mr White:** On a point of order, Mr Chair: I was wanting to hear the minister's response, and she did not have the opportunity to offer it.



**The Chair:** Your caucus will have the opportunity to ask questions.

**Mrs Cunningham:** You will have your chance. You can ask again if she does not answer the question.

**Mr White:** Ask the same questions the member refused to allow the response to?

**Mrs Cunningham:** No, I am just saying the minister's response was that the municipalities are up for grabs. Unless they have changed their minds, they very clearly stated over—and by the way, I complain—

**The Chair:** Through the Chair.

**Mr Perruzza:** Mr Chair, really, this dialogue goes back and forth.

**Mrs Cunningham:** Why do you not listen? Maybe you will learn something for a change, all right?

Mr Chairman, I would like to say that at great public expense, not just in dollars, but in municipal time—I am now talking about a major study that was done on the role of municipalities, provincial-municipal sharing—the municipalities came forward and told the previous government—and I have been sitting around here for some four years listening to this. Surely we do not have to ask them again. They said they do not want to be part of the funding of child care. Now, they said they would be part of other things. That was their last position. Why ask them again? Let's just get on with it. Now this government is talking about disentanglement, whatever that means. We are going to ask them the same thing all over again.

Nobody wants to pay for anything. What we are looking for is leadership, and these questions have already been answered. I say the government has shown leadership and they have already stated their case. They are moving in a certain direction: to publicly funded, universal child care, and I am saying the timing is terrible.

We should be looking at more private homes; that was the position. We should clearly look at the role of the schools. The minister is here today and I asked her, and do not answer by saying what the municipalities want; it is what you want that matters. I do not think these questions are specific enough. Are you going to make them more specific? What do you want to know about?

**Hon Mrs Boyd:** Unlike you, when I ask a question, I like to listen to the answer. We have asked a number of questions and you are quite right, there has been a lot of talk about this, but we have not had a province-wide discussion. We hear very conflicting views from different regions and sectors of this province. Rural people want something very different from what urban people want. Rural municipalities want to have some say that they feel they have not had in terms of how child care is delivered. They do not feel the models developed in large urban centres suit them.

**Mrs Cunningham:** That is not new.

**Hon Mrs Boyd:** They feel that the Day Nurseries Act is too rigid to fit them and we agree with that. We are asking questions in the legitimate effort to find out what people want and expect. It would be easy to simply apply a

system on top of this province, but we would not be sure it would meet the needs.

You say it has all been decided that the municipalities do not want to pay for anything. Municipalities never want to pay for anything, but they do want some say. They have been very jealous of their control over the number of subsidized spaces, and many of them are saying they continue to want that control because they see it as a community issue. They want to have a real input from the local level into how child care is delivered.

Jurisdictional and funding issues may be different, and we are asking both those questions to find out what goes. You may remember that the Provincial-Municipal Social Services Review Committee suggested municipalities be totally responsible for child care. Hopcroft said no, the municipalities should not be responsible. What we are saying is that there is not a consensus of opinion and we are trying to build a consensus of opinion.

**Mrs Cunningham:** I guess the key question now is: Will you be listening?

I know a position paper to be presented April 3 in London says that the city fears a loss of valuable, private day care spaces. So the question is: Will you be listening to the input?

**Hon Mrs Boyd:** I certainly will be listening to the input.

**The Chair:** Thank you. There are a couple of minutes left in your time.

**Mr Perruzza:** They are out of ideas and out of questions, Mr Chair.

**Mr Jackson:** My question concerns the number of municipal spaces being dropped. Does your ministry have a handle on that and if so, can you share those statistics with this committee?

**Hon Mrs Boyd:** Most of the municipal budgets, although they have been under discussion, are still at the preliminary stage, and we are not clear on that. Some of the final decisions on the most celebrated cases are still to be made.

**Mr Jackson:** But there are cases now.

**Hon Mrs Boyd:** We are gathering that information through our area offices. At this point, no, we do not have a complete picture, although we have certain areas that have been very explicit, but it is not clear at this time. We know municipalities are saying that they are unwilling to expand subsidized spaces and that some have indicated a desire to get out of the subsidized business entirely.

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**Mr Jackson:** Can you share with us the partial list of those? To reference you, you said some were clear that they had made that direction. I am aware of some municipalities and I am sure you are. Will you undertake to share with both caucuses when you do have the statistics?

**Hon Mrs Boyd:** When we have the statistics we certainly will be doing that. This is an issue of great concern.

**Mr Jackson:** Thank you. My next question has to do with the number of audits and visits undertaken by your ministry in this last fiscal year, the number of visits taken



and the distribution between private and non-profit centres. To what extent have we been expanding the visits by ministry staff, or have we, for purposes of examination? This committee will be giving a considerable amount of attention to the issues of scrutiny and accountability, so if you could share that with us, I would appreciate it.

As you know, I have raised questions with you, and you have undertaken in a statement during one of the late shows that you would undertake to pull together statistics in a more timely fashion. One of those statistics is the number of non-profit centres that are in financial difficulty and the degree to which you are on top of this issue. I think Ms Poole, as I was just out of the room for a moment, has requested the statistics on closures. I would like to extend that on behalf of the committee, for its work and its report, to look at the number of centres that have advised you or that you are aware are in financial difficulty. There is a large number that have closed.

The second part of that question has to do with the deficits and who is picking up those deficits. As non-profit corporations, there are labour adjustment matters, leases, lawsuits—there is a whole series of questions. Are you budgeted to pick up those deficits? That is an issue which I know the committee will want to deal with. If it is your government's intention to increase accountability and increase the non-profit grid, then I think the committee has a right to go into the area of to what extent you are looking at the fiscal accountability, since they are moving more into a monopoly situation for the services in this province.

**Hon Mrs Boyd:** We can certainly provide the information we have. As I said to you at the time we discussed this in the Legislature, we collect the data in a different way than you were asking for. We collect them by region. At the present time, the most recent information we have is that the number of for-profit and non-profit centres that closed are exactly the same, 47 centres each; slightly more spaces in the for-profit sector than in the non-profit sector. Again, as we said before, we treat these operations as transfer payment agencies and so we do not pick up those costs.

**Mr Jackson:** I know the explanation. My question was the deficits.

**Hon Mrs Boyd:** It is only where we are acting to try to maintain the centre, because of the lack of child care and the alternatives that are available to parents, that we pay any dollars out to maintain the centre.

**Mr Jackson:** So can you give us the list.

**The Chair:** Thank you, Mr Jackson.

**Mr Jackson:** My final question.

**The Chair:** No. You have had your final question. Mr Bisson.

**Mr Bisson:** Thank you, Mr Chairman. It is nice that you are very diligent with the time that I have left.

I would like to pick up on a couple of things. I just want two or three points very quickly. One of the things you said, Minister, was in answer to the questions that were posed by the members of both parties in the opposition in regard to the consultation process. I know myself,

as the member for Cochrane South, I have met with parent groups, I have met with private operators, I have met with the people who deliver the service, and you are right: There is a split on how we look at this issue. I think you cannot dodge around that. The reality is there are many people out in the society who believe both arguments. They believe public funds should be utilized in the non-profit sector, and in the same way, there are people within our society who believe otherwise.

The problem I have is that I heard mentioned here today by members of the opposition that when the government, whatever that government is, goes out and does consultation, works with the affected groups and comes to a decision, the charge is always made that somehow the government or someone has not listened. The point I want to make is this: Is it a question of not listening or is it a question that what they have heard is not what they want to hear?

The analogy would be that if we go out and consult with all the people in this room, if all of us sit here and discuss this issue at full length, we all give our particular opinions on it and a decision is made. Let's say this half of the room is against it and this half of the room is for it, and the government makes a decision, because after all that is what we are charged with as politicians, making decisions that are going to be affecting the public policy of this province. If we turn around and make that decision either for or against, 50% of you will be opposed to that decision. I just want to make it clear for the public record: It is not a question that people are not listening. The question is, we are charged as governments to go out and make decisions for the public good. Obviously, there will be people on either side of the argument who will say, "I'm for," "I'm against," and "If I'm against, I'm going to run against you," or whatever. That is fair; that is democracy. That is what it is all about.

To get back to the real point, I guess where I have a bit of problem with this—you mentioned it at the very beginning. I am one of those people who has been involved in the New Democratic Party for a long time, such as yourself. I always believed in the policy of the party, which is, if we are going to utilize public dollars in order to give a service that is seen as being something for the common good of the people within our society, we should try to do that within the non-profit sector, to do that directly through that type of mechanism.

I remember back in 1987 being quite happy with the decision that was made by the then Liberal government to go ahead and once again borrow a little bit of NDP policy and put it into action in government legislation. I was happy because I thought there was a recognition of that point on the part of the Liberal government—and actually all those members who sit on this committee were members of that government at that time—that we needed to plan how we were going to deliver day care services within this province. The best way we can ensure that we are able as a government to control policy in how we deliver that service is to go into the non-profit mode.

I do not think it is a question for us, nor was it for the government of the day, that there was a philosophical



difference against people in the private sector. It was not a question of profit or not making money; it was a question that we wanted to ensure that we found ways as a government then, in 1987, as we believe today that we have to find a mechanism by which we are able to deal with the issues of quality and delivery of service. I was glad at the time.

What I have a real problem with—and I am going to take a run at the opposition with this—is sitting here as a committee member today, five years after the date of March 24, 1987, where the government of the day said that it believed—and these are quotes from you, Mrs Poole—“Profit day care centres we do not feel should be publicly funded,” and a whole number of quotes. If you look at the standing committee Hansard of that date, that was the position the Liberal caucus took at that time.

**Ms Poole:** That is not what I said.

**Mr Bisson:** Excuse me. It is the public record, March 4, 1987, the select committee—

**Mr Perruzza:** You can look it up.

**Mr Bisson:** It was on the Hansard. It is not only your quote but also quotes from people of your caucus standing here today. The point is, at that point they took a position that I thought was quite progressive. I agreed with what the government of the day did and I remember being within my riding association and talking to people inside my community and saying: “They’ve got it right, darn it. Good for them.”

Interjection.

**Mr Bisson:** It is my 10 minutes.

**Ms Poole:** On a point of order, Mr Chairman: I would ask for Mr Bisson to provide that Hansard in its entirety, since he has selectively taken words out of context.

**The Chair:** That is not a point of order.

**Ms Poole:** But it is a request, Mr Chair.

**Mr Bisson:** I guess the question I am getting to is that there is obviously a political discussion going on around this whole issue and there is a bit of posturing, I guess, on both sides. That is what politics is sometimes about, and I guess that is why people tend to get dissuaded from politicians to a certain extent, because they see us flipping around on those decisions. We are all equally guilty when it comes to that; nobody has a monopoly on the perfectness of political posturing.

The point is, why at this juncture in time today, in 1992, are we back into the same argument? Do you have anything to add to that?

**Hon Mrs Boyd:** I wish I could. I think we have always been clear that we believe public funds should be directed—the only question, and it is a question we will be asked by our own party, is why we are continuing to grandparent the for-profit sector, frankly. We are saying that is the compromise for us, that we do believe the people who have been providing the care ought to be recognized for that and that we ought to be doing what we can to ameliorate the effects of this decision on them.

I think it is important for us to be very clear that there are a great many people in the child care sector and in our

own party who are not happy that we are not simply redirecting all the funding to the non-profit sector. We believe it is our responsibility to try to lessen the effect of this on those operators who were grandparented under the previous Liberal policy, that it is not fair for us in fact to attack those providers who have been providing good care and continue to provide good care to the children of Ontario.

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**Mr Bisson:** I just want to pick up on one thing. I have about a minute. One of the things that really shocked me, because when people within my riding came to me and asked me questions directly on where policy was going since 1987—you touched on something that really struck me and it is true. There is a real lack of data out there to take a look at what some of the information is, to take a look at delivery of service within the private sector versus delivery of service within the non-profit sector. I believe there is good and bad on either side. Nobody has a monopoly. But I think there are some fundamental questions that need to be answered by looking at how some of those data correlate in regard to what is happening within a sector.

You touched on it before that there was not anything really there before as far as a system for picking up the data, for taking a look at costs in regard to the amount of spaces out in the system and also taking a look at some of the quality issues. You said that the ministry is now starting to correlate that. I have seen some of that information from our local ministry people up in Timmins. It is starting to tell a bit of the story, but it is not really complete and I just want to know where we are going to go with that. What is the long-term policy in regard to really monitoring what is happening within a sector?

**Hon Mrs Boyd:** We simply have to be better at it. We in fact have allowed the system to grow without systematically evaluating and monitoring what goes on, and we are trying to work very quickly. We do have some more clues than we did before. We do have a very good literature review that has now been done that picks up some of that issue. It shows very clearly that there are some questions around quality in terms of differentials between for-profit and non-profit and it also shows in terms of cost. The recent study that was done in Metropolitan Toronto comparing costs showed that the community-based non-profit sector is definitely the most economical per unit to offer child care and that the for-profit sector is more expensive and that municipally run child care is the most expensive.

We are gathering those kind of data. We think it is very important that we have these kinds of data, and I continue to be rather dismayed with the fact that we cannot show longitudinally over time, over the time the two previous governments were doing this, the kind of picture that would really help us with this. We are saying that we recognize that in the absence of those data, it is our responsibility to do the monitoring from henceforth.

**The Chair:** Mr White, there is about a minute.

**Mr White:** I have just one brief issue, and it was brought up before, that municipalities want to divest themselves of the provision of child care services. In my community, in Durham region, I know the chair of the social

services committee and the commissioner of social services extremely well. I am shocked to have heard that they want to divest themselves of offering those services. I think the quality of the child care services offered in Durham is exceptional. I just want to know if there is any clarification about that. Is this true across the province, that municipalities at a regional and local level want to divest themselves of those services? Certainly I think they are one of the prime tools for the operating of day care. Certainly the ministry does not directly operate the day care services. I am wondering if you could clarify that.

**Hon Mrs Boyd:** There is a difference of opinion. We have a number of communities that have put us on notice that they are simply going to pull out of offering subsidized care. One in particular is Grey county, for example, which has said very clearly that it does not want to continue to participate. There are other municipalities, like the municipality of Metropolitan Toronto, like Ottawa-Carleton, like Durham, that certainly have indicated that although they are unhappy about the cost-sharing and the increased pressure on property taxes—to be funding child care out of property taxes creates real pressures on them as municipalities—the commitment to a local level of input into the provision of child care is very important to them. The maintenance of quality, the sense that it is part of the partnership they have in community, seems to be important to them.

So no, I do not think there is a consensus around how we are going to decide both the jurisdictional and the funding issues. That is what we are doing at the disentanglement table. We are talking very frankly about what it would mean. How would local input be meaningful if the

funding component were not there? That is undecided. There are many different ideas around how that might go. Are we in fact looking for some other mechanism to ensure that there is community input into planning so there is a conjunction between the planning of child care and the planning of a new subdivision, the planning of a school and the planning of the child care centres that would feed into that school? That needs to be done at a local level. We are concerned as a province to find ways that kind of public input can be made in a meaningful way as well. So that is why there is not a consensus of opinion at the table at this point in time.

**The Chair:** On behalf of the committee, I would like to thank you for appearing before us this morning. I know your schedule is very busy and fitting these kinds of things in is sometimes difficult, so we appreciate your time. Before you leave, research was interested in having your review of the literature you mentioned. If that is available, I think it would be valuable to our researcher.

**Hon Mrs Boyd:** Yes, we could certainly arrange for that. I do not know whether you also want a copy of the municipality of Metropolitan Toronto. This was a jointly funded study that was done with Toronto. I have a copy of that here, but I do not have the literature study. We will get it to you.

**The Chair:** Thank you. The committee will adjourn. I know I do not need to remind members, but we reconvene at 2 o'clock. We do have presenters, so if we could have members here as close to the time as possible, it would be appreciated.

The committee recessed at 1215.



## AFTERNOON SITTING

The committee resumed at 1408.

**Mrs Marland:** Mr Chairman, I have a request. Is it possible for Mr Gardner to introduce the members of the ministry staff, or the minister's staff, who are present this afternoon?

**The Chair:** Mr Gardner is from legislative research.

**Mrs Marland:** Oh, pardon me. Is there someone here from the ministry who can introduce the staff?

**Mr Bisson:** Why would we want to get into that?

**Mrs Marland:** I think the question is in order. I am just interested to know if there are ministry staff here, and if so, who they are. Is there only one person from the ministry here?

**Interjection:** As observers?

**Mrs Marland:** In any capacity; staff members of the ministry.

**The Chair:** I think, Mrs Marland, we will just continue with the proceedings.

**Ms Poole:** Just before we begin, I would like to table a report with the committee. It is the Fourth Report of the Select Committee on Education, which dealt with early childhood education. The minister made extensive reference to it today. I would like to table the whole report for members' information. Although it did not directly deal with this issue, it did deal with the periphery. I want to read just one paragraph:

"There are many facets of child care that are beyond the scope of our deliberations. We will not comment on licensing, regulation, funding, the balance of public and private provision, and overall policy development. Our main focus is on the interrelation of the educational and child care systems and how children's learning experiences in the different settings can be integrated and enhanced."

So while I appreciate the minister's comment, the select committee on education did not provide any of the research material she was referring to when she made her December 2 announcement.

**The Chair:** Thank you, Mrs Poole. I am sure all members of the committee will appreciate the report.

UNITED VOICES FOR FAIR TREATMENT  
IN CHILD CARE

**The Chair:** This afternoon we have a number of presenters coming before the committee. Our first presentation will be made from United Voices for Fair Treatment in Child Care; Jackie Cousins, chair. I welcome you to the committee and point out that we have 40 minutes for your presentation, which will be closely and carefully watched, the exact time. The committee would appreciate some time to ask questions. As a suggestion, if your presentation is in the neighbourhood of 20 minutes, that allows the members about 20 minutes to discuss that presentation with you. Perhaps you would like to introduce yourselves for the purposes of Hansard.

**Mrs Cousins:** My name is Jackie Cousins, chairperson for United Voices for Fair Treatment in Child Care. With me today is Ellen—

**Mrs Versteeg-Lytwyn:** Versteeg-Lytwyn. I am a parent and I am a member of United Voices as well.

**Mrs Cousins:** We would like to thank the members of the standing committee on general government for giving us this opportunity to discuss here today the impact of the NDP's child care policies on parents and child care staff, taxpayers and owners.

United Voices is a non-profit organization of parents, child care staff, owner-operators and taxpayers, all of whom share a vision of an affordable, accessible, flexible system of quality child care in Ontario which recognizes parents as owning the responsibility for deciding who cares for their children, treats all participants in an equal and non-discriminatory manner, is responsive to the needs of children and families and is accountable to the taxpayers of Ontario.

We believe Bob Rae's decision to pour hundreds of millions of dollars into the non-profit child care sector over the next five years will result in a predictable demise of up to 645 privately operated child care centres. In addition to our membership, members of local, provincial and federal governments, community-based groups, ratepayers' associations and parent groups have all denounced Rae's plan to make child care delivered only by non-profit entities.

All of the aforementioned believe Bob Rae's child care plan will essentially create another expensive bureaucracy, lead to a less efficient system of poorer quality child care, reduce parental choice, result in significant job losses and business closures, thereby decreasing tax revenues and creating a further strain on taxpayers, and lead to less child care spaces than what we have now.

Instead of spending money on bricks and mortar, United Voices urges the Premier and his honourable Minister of Community and Social Services to target child care tax dollars directly to those parents now waiting for fee assistance in order to access quality child care, and on the improvement of the enforcement of the Day Nurseries Act in order to uniformly improve quality.

In light of our huge deficit, declining provincial revenues and increasing unemployment, it is illogical for Bob Rae to even consider spending hundreds of millions of scarce tax dollars simply to change the ownership and control of existing quality child care services in the private sector, built at no cost to the taxpayer. What guarantee is there that parents will still have care for their children? Why should the 30,000 children now in private centres have to face the possibility of separation from their familiar surroundings, their friends and their trusted care givers?

It is impossible to predict how many spaces we will lose, or which ones. What will be the cost to taxpayers to replace these spaces and what are parents and their children supposed to do in the meantime if alternatives are not available? The NDP conversion plan could put thousands of parents at risk of being left without child care or having



to accept poorer quality care for their children. Thousands of child care workers, most of them women, will be at risk of losing their jobs, seniority and benefits.

We wonder if another example exists in history where a government has spent hundreds of millions of tax dollars to effectively shrink the level of service and put people out of work.

Bob Rae's plan to make all child care non-profit by forcing private centres out of business through subsidization of competing non-profit centres, the wage enhancements, pay equity, bail-out funding, operating grants or any other program Rae may come up with, has not adequately considered the terrible impact it will have on the real people out there: the children, the parents and the workers.

The fact is, Bob Rae and Marion Boyd have yet to satisfactorily answer why they want to spend our tax dollars to replace or eradicate existing quality child care services, wanted and needed by the community.

Quality is not an issue. The former Minister of Community and Social Services admitted, "I am aware that there are for-profit child care programs in Ontario that provide good quality care and meet parental expectations." A senior civil servant in the child care branch attested that she did not see a problem with private centres. An excerpt from Metropolitan Toronto's 1986 Blueprint for Child Care Services states, "In Metro's experience, the provision of quality care has no direct relationship to whether the program is a commercial or not-for-profit operation."

Bob Rae believes that the non-profit sector ensures greater accountability. Why is it then that so many non-profit centres are in debt? What controls are in place to ensure the financial responsibility of public funds? Why is it that the largest non-profit chain in Metro had to shut down last year after financial irregularities forced Metro to pull more than 300 children from its care?

Accountability is a problem in the non-profit child care sector. United Voices includes in its membership child care staff who are still owed months of direct operating grants from non-profit centres. Numerous examples abound where new non-profit centres have received generous capital grants and spent them on lavish items such as imported German lighting, inlaid mosaic flooring and state-of-the-art appliances.

Two years ago, non-profit centres in northern Ontario each found themselves the recipients of a \$5,000 toy grant from the Ministry of Northern Development, whether or not the money was needed. Even the Metro Coalition for Better Day Care recognizes that many non-profit centres have difficulty with financial planning.

In 1989, the Provincial Auditor's report disclosed many areas of concern with cost-effectiveness and duplication in the province's provision of child care. In fact, a letter from the Provincial Auditor to one of our members states:

"With respect to your concern for the accountability of licensed non-profit day care centres, this area was a subject of a recent audit by this office. In particular, your concern about inadequate monitoring by the ministry was a major finding of this audit."

A review of provincial child care expenditures over the last five-year period indicates an accountability problem of huge magnitude. For example, child care operating expenditures have increased 166%, from \$139 million in 1987 to an estimated \$370 million for the 1992 fiscal year-end, yet the number of children actually served in licensed care only increased by 7%, from 114,186 in 1987 to 123,006 at the end of 1991. In fact, fewer children are now in licensed care than in 1988.

Capital and operating combined expenditures have increased by 43% from \$333 million in 1990 to an estimated \$475 million in fiscal year-end 1992, yet the number of children served has decreased by 12%.

Despite a decline in need for day care since 1990, millions of tax dollars continue to be spent on building new non-profit centres, particularly in areas where there are spaces in existing facilities. For example, in Richmond Hill we saw the development of 11 new non-profit day cares in 1991, despite spaces being available in established centres. In Hamilton, seven new non-profit centres opened in 1991, the same year that 12 centres closed, six of these being non-profit and previously built with tax dollars. Yet in February 1992 the Ministry of Community and Social Services announced \$400,000 in funding to create another 42 non-profit child care spaces in Hamilton. Where is the accountability?

1420

United Voices requests a full-scale audit by the Provincial Auditor on child care spending by the Ministry of Community and Social Services and the Ministry of Education. Perhaps an audit will also confirm or deny the existence of shadow funding for non-profit centres in debt. All major child care expenditures should immediately be put on hold until such time as an audit is completed and procedures are put in place to ensure accountability in child care spending. This includes the recently announced \$350 million five-year package in new annual wage enhancement funding for non-profit staff workers and the one-time funding for buyouts of existing private centres or replacement of private spaces.

Additionally, a full-scale public referendum should be conducted to determine whether or not the public feels the money spent on conversion, replacement of lost spaces and propping up of nonviable non-profit centres is more effective and publicly accountable than being spent on providing fee assistance to help children now on waiting lists to access the empty day care spaces in existing centres.

As a final point, Marion Boyd has publicly stated several times that she believes child care should be an extension of the public education system. Two major discussion papers dealing with young children, *The Early Years* and *Child Care Reform*, strongly suggest the shifting of responsibility for child care, including junior kindergarten, from the Ministry of Community and Social Services to the jurisdiction of the Ministry of Education.

We believe the impact of such a shift on families and children would be tremendous. This would include:

The majority of funding for child care would be derived from the regressive property tax base. Persons on fixed incomes, such as senior citizens, would be penalized.



Child care would become another downloaded program for municipalities to fund.

Child care will become more costly to provide. Staff salaries and benefits will increase substantially. "Accessible to all" will mean building full- and part-time day care spaces to accommodate 1.7 million children, up from the present 120,000. Almost 200,000 new child care staff would have to be hired.

If only one half of Ontario's 1.7 million children under the age of 12 were to use a "free" child care system under the jurisdiction of the Ministry of Education, United Voices estimates the construction costs at approximately \$9 billion and annual operating costs at \$4 billion. This translates into a tax increase of almost \$2,500 per household to build and over \$1,000 each year to operate. These estimates do not consider increased costs from pay equity requirements.

Presently over half of all families do not require any form of outside child care, and only 10% of all families with children under the age of six currently use centre-based care, the model used by the educational system. Child care under the Ministry of Education would lend itself to empire-building and rigidity. Parental control would be diluted. There may be an emphasis on school-like activities instead of age-appropriate skills.

The closing of local child care and nursery school programs would be affected. The loss of property tax revenue from the existing 645 private centres is estimated at \$2 million annually. Other tax revenues lost, including income taxes, business taxes and sales taxes, are estimated at \$10 million annually.

Conflicts with school operating schedules would abound. Child care requires 10- to 12-hour days, year-round.

Needs of children aged infant to five differ greatly from those of older children. Exposure to large institutionalized settings are not beneficial in many cases. Child care in schools would lead to reduced flexibility, parental choice and parental involvement.

I would just like to comment, after hearing part of this morning's testimony with the honourable minister. I would like to say that parents spend a great deal of time when selecting their child care arrangements. It is a parent's greatest fear to think that a child care arrangement is not suitable for him or her, for his or her children or not safe or of quality. When a parent does find an arrangement that is appropriate to him or her, he or she will do almost anything to maintain it. We now have 30,000 parents who have gone through the process, a very educated process—there is nothing more important in a parent's life than his children—to select a centre. Whether it is non-profit or private or home care or a neighbour or grandmother is irrelevant. The point is this parent has selected it because it is best suitable for him and his family.

The fact that this initiative puts those children at risk and those parents with the possibility of losing these chosen arrangements is detrimental to all families involved, and we feel that governments do not have to make these decisions for us. You have a lot of educated parents out there. You have not heard from them because they have been too busy working, so you have other groups that have different

interests, but if you want to hear from a parent voice, you will most definitely be hearing more from us, because as soon as parents understand that their arrangements are in jeopardy of being lost, you will have a large-scale revolt on your hands. With that, I would like to turn the mike over to Ellen.

**Mrs Versteeg-Lytwyn:** Thank you for this opportunity. You have been told my name is Ellen Versteeg-Lytwyn, and I am a parent user of a private child care centre in Mount Albert, Ontario. My parents came to Canada, specifically Ontario, 40 years ago, with seven children under the age of 10, because Canada and Ontario represented, among other things, opportunity, free enterprise and freedom of choice. The reason I appear before you today is because I am gravely concerned that my right to choose as it relates to my day care is about to be taken from me.

Children are indeed our most valuable resource. Everyone has a right to bear children and those children have rights. It is our collective responsibility to ensure those rights. As today's life dictates that most families require two incomes, and no longer just for the second car or the luxuries—I do not have to tell you that—one of the rights I feel is inherent is safe, quality care for our children.

I was asked to specifically address my concerns as a parent in the event that Mount Albert Child Care Centre is forced to close. Let me tell you why I chose Mount Albert Child Care Centre. First and foremost, they offer a loving program in a safe environment. Second, also very important to me in my rural location, is that this day care centre is on the bus route serviced from the school my children attend 10 kilometres away. Last, certainly not least, the fees they charge are affordable for me in my present circumstances. No other licensed child care centre in my area offers me that.

I, like so many others, made the assumption that non-profit day care meant cheaper day care. I think I was wrong. I did a straw poll among my contemporaries, whom I would consider to be of average or above average intelligence, and I asked the question of them, "What does universal non-profit child care mean to you?" Most of them were correct in their assumption of universal meaning to be accessible by all. But they all felt that non-profit was going to mean cheaper for them. Perhaps for some, perhaps for a few; I do not think so for me.

The dilemma I will find myself in as a result of the day care having to close will be not only that I will not have a day care to go to, but I will have to support through higher taxes a system I can no longer afford to use because my net income will be reduced. I cannot afford a penny more than I presently pay for my day care.

1430

The private centres going out of business will mean a reduction in the municipal tax base. So who is going to make up the slack? Guess who? The middle-income earner, me and thousands of others, in my personal income taxes and also in my property taxes. The equation does not equate, ladies and gentlemen.



Now I have another problem. Where do I get day care? To add insult to injury, I may be forced to use a private, non-licensed, probably—and I know you do not want to hear this—non-taxpaying care giver. The insult is further compounded by the fact that this care giver is in all likelihood providing a deduction for her spouse. Is this what we have in mind with these propositions, ladies and gentlemen? I do not think so, and I have serious problems with the concept.

I am concerned that the proposed changes are being contemplated without a proper review and study. Look before we leap. It is extremely difficult to undo the damage when it is done. Before making changes, examine the present system, determine what, if any, problems exist, and let us formulate viable solutions to the problems together.

I hear there are 5,500 empty spaces in the city of Toronto. Can they not be used in some productive manner to help the people who are without child care? Speak to the users and the workers in the system, but more important than that, please listen to what they are saying. This is critical. Where we do not have a problem, do not tamper. Leave it alone. Don't fix it if it ain't broken.

Ladies and gentlemen, you are contemplating regulations which may effectively have great impact on something that is of utmost importance to me: the right to choose the day care environment my children will be in; my right to choose. Don't you dare take that away from me. I thought George Orwell's Nineteen Eighty-Four was merely the title of a disturbing fiction.

In closing, I for one, like many others, am tired of government telling me: "This is for your good. This is for your benefit." I think that is my decision to make. I think it is incumbent upon the government, which is proposing these regulations, to demonstrate to me patently what those benefits are. The way I see these proposals affecting me and thousands upon thousands of other parents like myself is higher taxes, no day care and no choice. This is not acceptable to me.

Also, if I may, I understand that this child care reform paper is proposing that my fees in this Utopian system will be directly related to my income. So now someone is going to tell me what I can afford to pay for day care? I do not need anyone to tell me what I can afford to pay for day care. I thank you for listening.

**Mr Jackson:** First of all, may I commend you for a well-thought-out brief, and concise and brief, all the elements we try to strive for, especially when our researcher has to wade through all this and put it in a report by week's end.

You were perhaps present when the minister this morning responded to some questions. Perhaps the most disturbing new bit of evidence I heard this morning, and I would like to get your reaction to it, is that when I asked her about the growing number of non-profit centres that are operating in deficit and closed—there are those closing; then there is a whole whack of them that are operating in deficit—she implied that there was additional support to maintain those operations. How do you feel as taxpayers that we are now introducing a third level of funding from the province to maintain day care centres while at the same

while, with less total funding, you are struggling to survive with your centres that both of you choose to put your children in? How do you feel as a taxpayer with that? We have a bad situation, but it appears after the minister's commentary that there is even more hidden subsidy flowing.

**Mrs Cousins:** I would like to respond to that. It tells me that child care expenditures are out of control. It tells me that the cost of child care will continue to climb. When I look at the private sector situation, where the incoming revenues are relatively fixed, where they adhere to the same regulations as they do in the non-profit sector, and yet in the non-profit sector the costs are increasing who knows how many times—two times, three times—there is just no control and no accountability in this whole sector. As a taxpayer, I am extremely fearful that should we now allocate an additional \$350 million in one pot, and perhaps more in another, we have no idea how much child care delivery will cost us.

**Mr Jackson:** The next question has to do with this concept of scrutiny of and accountability by the public sector. How accessible do you find the management of the centres to which your children participate on the issues of information, the parents' exchange of information? I have my opinions because I am a consumer of day care services in this province and I have had an opportunity to see the correspondence and to be able to step in and talk to the teachers and the owners. The minister made a large point of that this morning, more so than the government has in the past. How do you feel about that point, given that she is essentially responding by saying that somehow that type of day care is better because it has that component to it, implying that it does not exist in the day care you are involved in?

**Mrs Cousins:** I participate in my day care on a daily basis. I talk to the director and my child's teachers every single day. If I have a problem, it is rectified within the next day. I would be fearful of having to talk to a board of directors and perhaps not getting my problem, if I had one, attended to immediately, on a same-day basis. I would not want to wait for the next monthly meeting and talk to people who have no idea who my children are or have any knowledge of them. I think that is a red herring. I think all parents are involved on a daily basis.

**Mrs Versteeg-Lytwyn:** If I may add to that as well as a parent-user, I guess the key is communication, as it is in any situation you are in. The communication I have with the owner-operator of my centre is 110 per cent. Again, if we have a problem, it is addressed. If there is a question on programming, it is addressed. She is accountable to me as a parent and as her client. That relationship works very effectively.

**Mr Jackson:** The other question I have has to do with her reference this morning to equity and her moratorium on conversion. It strikes me that where the minister offered no hope to the women workers who are working in private centres in Ontario—she offered no consideration for their plight in terms of simply being severed and loss of all their seniority rights—by having a moratorium the outcome in many cases will be that the centre simply closes and that



reconstituting that environment as a non-profit centre is at risk because the staff will have to go on unemployment and will dissipate. The new corporate board is not obligated to first-hiring rules. So really the employees get screwed over, if you do not mind the expression, under this schematic that the government has come up with. The children suffer because of the school-phobic tendencies that occur when you have multiple teachers during a given school year, and that is valid empirical research, which has been done, for three- and four-year-olds as for six- and seven-year-olds.

It strikes me that there is no win even in the conversion process now that the games and the rules have changed, that you have even less choice than if you can at least maintain the same teacher. That teacher who has bonded with the child is being told: "You're no longer needed here. We're going to bring in employment equity, and because you're not fitting the equity model, you're gone. We'll be bringing somebody else in to fill that spot." How do you feel about that? I am just seeking a response.

**Mrs Cousins:** The most important concern to me is my child's teachers. The teachers he has now are super. They know my children. I support them 100 per cent. If those teachers have to leave, for one reason or another, then I do not know what I will do, because to me, there is no better peace of mind than knowing that my children are being cared for by warm-hearted, caring people, and I know that a turnover in staff is a detriment to children.

1440

**Ms Harrington:** First of all, I would like to address one of the comments you make in your brief, that the funding for child care would be derived from a regressive property tax base. Just to set the record straight, there is certainly no intention in the long term to have that funding come out of the property tax base. We know that is a problem.

As you may know, there is a Fair Tax Commission reporting soon. We find the process of disentanglement of provincial funding and municipal funding is a problem in many areas, and certainly we do not want to get day care into that problem.

I think you would certainly have to agree with me, and you have agreed, that day care is very important. As a parent, I certainly know it made a difference to me, whether or not I stopped working; I was that upset about not having adequate child care arrangements. When I found a good private day care—this is many years ago—it made so much difference to my life.

The problem I feel with the day care situation is, how can you have sufficient wages to pay people adequately and also have an affordable fee? Those two things just do not seem to come together. If I could see it coming together, then certainly we would have an answer there.

You liken the non-profit board, as the minister has mentioned, to a school board, or the system to the school system. I do not think the non-profit board is like that. I think it is more like a hospital board, which is a community board that is not run by the government. The decisions are made by that community board. This is not a system

that is run by the government; it is run by those who are on that local board.

You mentioned how lucky you are to have quality day care and how primary that is to our children, as well as ourselves, and that this choice is so important. I feel that is what this government is here to do, to provide that choice, so many people like you and I may have the opportunity to make that choice. I even had the choice to quit my job if I did not find adequate child care. But I am saying there are many people who do not have that choice and our government's position is to try to provide more opportunity for that choice. I think we have a right to care and that is what this is all about.

There are two things you said that I noted down which I think are very important. You have said, first of all, "Speak to the users and providers in the system." That is what I intend to do, as well as the people who are going around from the ministry consulting now. Second, "Make usage of the spaces that are available." It does not make any sense in this economic climate going out there and building new spaces. We have to utilize what we have. I invite you to make sure that you are involved as much as possible in our consultation on how we go about this system.

**Mrs Cousins:** I would like to respond to a couple of those points. I agree with you that quality child care options should be available to all parents. However, the problem in the direction of the proposed child care reform that the NDP is taking is that the emphasis is not on providing quality care for all parents; the emphasis is on changing ownership of existing quality services.

Our point is this: There are already approximately 30,000 families using private services that have already chosen them for one reason or another. Our problem is that it is these children and these families that are at risk of losing their centres, of having them shut down because they cannot convert or will not convert and having the children affected and also the staff possibly lose their jobs, their seniority and their benefits. That is where the problem is. Government should concentrate on providing quality care in areas where it is needed throughout Ontario, not on spending all kinds of money on effectively creating the demise or takeover of existing services.

On your point about the consultations, the problem with the child care reform consultations is that several key issues have already been decided. They are decided without any public input. These are that a non-profit system is the preferred method of delivering child care. That is not open for debate. The problem is that if you were to poll the majority of Ontarians, we already have Gallup polls that suggest Ontarians prefer the current mix of delivery agents—private, non-profit, home care—and this whole issue has been bypassed in child care reform. The major point being asked is how to collect parent fees. I do not feel I have any formal vehicle for my input to say: "No, wait a second. Non-profit child care is an alternative. It is not the only one." So I do see a huge problem with that whole consultation process.

In regard to your point about the staff salaries, I know that we have made great strides in the last three or four years or so in bringing these salaries up, but I suggest the



direct operating grants are a very effective use of tax dollars to keep parent fees within reasonable limits and at the same time give increases to staff salaries. I think this is a much more effective use of funds than rebuilding an entire system, direct-funding it, with the possibility of huge cost increases as we have noted before.

**Ms Poole:** Thank you very much for your presentation this afternoon. We found it quite helpful. What I would like to do is show a real example of a private child care centre and how this policy is going to affect it. The previous Liberal government introduced a policy where the expansion was going to be in the non-profit sector, and existing private child care centres would still be entitled to have moneys for raising child care workers' fees, lowering parental fees and also obviously to have subsidized children in their centres.

Let's look at what the main difference is between that proposal and what Marion Boyd announced on December 2. My understanding is that one of the biggest problems is with the fact that they will no longer have any new subsidies within the private child care centres. For instance, if you have a child care centre with 15 children and you lose three or four of them by attrition, because they have moved or they have outgrown the need for child care, then you will not be able to replace that with other subsidized spaces and you will not be able to continue to operate. Am I right? Is that part of the problem?

**Mrs Cousins:** That is one of the methods of forcing closure of private centres. Of course it is a problem. It is very predictable what the result of such a policy will be on the private centres and the children who are there.

**Ms Poole:** This morning the minister said very clearly that they were not forcing it, but it seems to me the reality is that if you will not be allowed to have your subsidized children in that centre, even if you can retain the ones who are currently being subsidized, just by attrition you are going to lose a certain number. You cannot replace them. You cannot get enough full-fee-paying parents to make up the difference and you just cannot afford to operate. That is the scenario I see. Is that reality? Is that what is going to happen to you?

**Mrs Cousins:** That policy will put many centres into the ground. There is no doubt that without subsidy children coming through and giving parents the choice to go to whatever centre they wish—they should not be told they can only go to one or another—it does not take an Einstein to figure out the result of such a policy. It is very plain.

**Ms Poole:** I have also talked to a number of day care operators who are really concerned about the effect on staff. Obviously if the differential between the private sector child care workers and the non-profit sector child care workers continues to widen, that means the private child care workers are eventually going to be leaving those centres, because they just cannot be competitive with the wages. Have you heard from workers, from staff, that they are afraid of this? Do you think this is going to be very bad for your staff morale?

1450

**Mrs Cousins:** Absolutely. We had a survey conducted last May and asked staff to comment on how they felt this policy—pay equity funding only to non-profit workers—would affect them, and they all said it will affect their staff morale, cause turnover and effectively create problems for the children in existing centres. It is a very detrimental policy, the results of which are easy to predict.

**Ms Poole:** Thank you. I think Mrs O'Neill had a question.

**Mrs Y. O'Neill:** Your brief is so clear, so excellent in its focus, that I really do not have a lot of questions. But you have had an opportunity to hone it since we saw you last.

I wanted to ask you a little bit about the staff at the centres you are working with and that your children attend, because you have made it very clear that you chose these centres with a great deal of care. There seems to be a feeling in the community that the staff at the commercial, small business day care centre are not up to the same quality as those in the not-for-profit. That is a pervasive rumour across the province. I want to give you both an opportunity to say a little bit about what you know about your staff's qualifications and why you have such a faith in them that you would say you stand by them completely in the care of your children. You did make that statement earlier, so I would like you to respond if you could.

**Mrs Cousins:** Do you want to say something? Go ahead.

**Mrs Versteeg-Lytwyn:** You have been doing a lot of the talking. I will give you a break. First of all, the insinuation that the staff is of a lesser calibre or quality is utter nonsense. I am a professional. I go to business and I expect professionals in my life everywhere, including my day care centre. But the bonus for me is that at my day care centre they are truly a loving family. We care about each other. You would have to go there, really, ladies and gentlemen. We are a family. There has not been one person leave that centre since I have been going there. The centre I was in before—

**Mrs Y. O'Neill:** You mean staff, or parents?

**Mrs Versteeg-Lytwyn:** Staff; parents, maybe by way of losing their employment, which forces them out of day care. Everybody on my street said, "Have you been to Mount Albert child care?" It is totally amazing. It is so encouraging. My greatest fear is my child care. When I go to business in the morning, I have a responsible position to not have that worry about my kids. I cannot tell you what a relief it is. And the insinuation that they are of less—I take exception.

**Mrs Y. O'Neill:** So this staff have qualifications that you—okay. Sorry, my time is up.

**The Chair:** Sorry. The time has been allocated and it has expired. We appreciate your presentation very much. Thank you for coming.

**Ms Poole:** Mr Chair, while our next presenters are getting themselves settled, I wonder if I could ask the ministry for a point of clarification. In the last presentation,



they used the figure \$350-million five-year package. I know there has been a lot of confusion around the ministry announcement, whether it was \$75 million as a total for five years or \$75 million per year. My understanding is that it is \$75 million total spread over five years. I just wondered if we could have that clarification because I think it is quite important that we operate with the right figures.

**The Chair:** Is there someone from the ministry who could clarify that for us?

**Interjection:** I believe it is total.

**Ms Poole:** That is my understanding.

**Interjection:** Could you repeat that, please?

**Ms Poole:** The previous presentation used the figure \$350 million for five years. One could interpret the minister's announcement to be \$75 million per year for five years or \$75 million total over the five years, and it was my understanding it was \$75 million total over the five years.

**The Chair:** Just for the purposes of our Hansard, could you come up to one of the microphones?

**Mr Mammoliti:** Just say "yeah."

**Ms Poole:** And your name.

**Ms Ostrowska:** My name is Sonia Ostrowska. I am with the child care branch, and that is my understanding as well, yes.

**Ms Poole:** Thank you.

**The Chair:** Good afternoon. As you may know—

**Mrs Y. O'Neill:** I am sorry, Mr Chairman. Are you suggesting then that the \$10 million for replacement for non-profit is spread over five years, so that is \$2 million per year?

**Interjection:** That is right.

**Mrs Y. O'Neill:** Is that what these figures are broken down into?

**Ms Bertrand:** I think it is unclear whether it will be \$2 million per year over the five years or how it will actually get distributed.

**Mrs Y. O'Neill:** I wanted the answers from the ministry. I thought the ministry were the people who were answering.

**The Chair:** Perhaps we could ask that the ministry—

**Mr Mammoliti:** Let's get this one straightened out.

**The Chair:** Perhaps we could ask that the ministry clarify that. If they are not prepared to do it right now, I think we can get the clarification first thing in the morning. Are you prepared to clarify—

**Mr Bisson:** Mr Chair, from the government side, maybe the best thing to do is that I can get that information, report back to the committee tomorrow morning and make it clear as far as these points are concerned. Would that be acceptable?

**The Chair:** Yes.

**Ms Poole:** Let's do that.

**Mrs Y. O'Neill:** We have to do it—

**The Chair:** I think it would be best if we had it directly from the ministry, if they could—

**Mrs Y. O'Neill:** The minister.

**Mr Bisson:** I will bring that down tomorrow.

#### ONTARIO COALITION FOR BETTER CHILD CARE

**The Chair:** The next presentation will be made from the Ontario Coalition for Better Day Care: Kerry McCuaig, Carrol Anne Sceviour and Jane Bertrand. Good afternoon. You have 40 minutes allocated for your presentation. You may use the time as you wish. However, the committee always appreciates some time to discuss your presentation with you. Please introduce yourselves for the purposes of our Hansard.

**Ms Bertrand:** I am Jane Bertrand. I am the president of the Ontario Coalition for Better Child Care and I thank you for the opportunity to address this committee this afternoon.

Since its founding in 1981, the Ontario Coalition for Better Child Care has advocated for a universally accessible, high-quality, comprehensive, non-profit system of child care. Among the coalition's members are parents, child care workers, child care professionals, social science researchers, teachers' federations, unions, social workers, agricultural organizations, women's organizations, churches and child care programs.

We would like to stress that we do not represent only the non-profit sector in child care. We have non-profit child care programs within our membership, but our membership goes far beyond non-profit programs, encompassing nearly every major organization with concerns for children in this province, and among all these organizations there is a consensus that quality child care can only be effectively delivered through a system which is not driven by the profit motive.

Support for non-profit care has been the long-standing—in fact, one of the founding—principles of the coalition. We have been before committees at all three levels of government stressing the importance of this issue, at the local level, provincial committees in the past that I believe you have discussed earlier today and, before the federal government, at least two task forces, if not three.

The last time we were before this committee was five years ago this month, when the direct operating grant was under discussion. At that time the Liberal and Conservative members of the committee issued a report calling for the restriction of future direct government funding to the non-profit sector. The parties also called for a conversion plan in that report.

Tinkering with child care has pretty well reached a dead end. There are 12,000 families waiting for care while 6,500 spaces go vacant. This should be all the data we need to tell us that something is very wrong here. In January 1991, 5,000 subsidies were put into the service by the province. It took a year for the municipalities to bring these subsidies on line, even though the service was experiencing record waiting lists and record vacancies.

Since January 1992, there has been a reversal in the growth of child care. Metro Toronto will decrease its subsidies by 750. Ottawa will not bring on the 500 it planned



to. Grey county will cease taking any subsidies; child care programs in its jurisdiction have been told they have until June to become approved corporations, which means they will deal directly with the province and not receive any municipal funding. These stories can be repeated across the province and we have lots of them on file if you are interested.

There have been suggestions that more go into subsidies. I would like to ask the committee, what municipality would pick up new subsidies if they were made available tomorrow? What municipality has the 20% to cost-share? In short, shoring up child care by infusing more subsidies into this system has come to a dead end. It will not work.

1500

Child care workers saw their worth recognized through the wage enhancement grants announced at the end of 1991. In 1992 the same child care workers face wage freezes at best and, in some cases, wage rollbacks. Municipalities, reacting to the 1% increase in transfer payments, have frozen per diem payments, some at 1991 rates and some at 1990 rates. Therefore, what the province gave with the one hand, it and the municipalities have taken back with the other hand. The wage enhancement grant, a move which could have provided fee relief for parents, has been negated. Subsidized parents are paying increased user fees across the province. Full-fee-paying parents are paying more to maintain the viability of the child's program. Subsidized parents are paying increased user fees in many municipalities. Still, programs remain in crisis.

There are several reasons why programs are in deficits. First of all, vacancies are a prime cause. Either subsidies are not available or full-fee spaces are too expensive. In some areas subsidies are available, but unemployment is so high there are no families to access them.

Second, municipalities are not paying the actual cost of child care. This means that even if subsidies were expanded, more subsidies would push a program further and further into deficit. In other areas, programs are not accepting subsidized families because full-fee-paying parents are refusing to subsidize their care. This is causing a serious wedge between fee-paying and subsidized families within the same centre.

That non-profit programs are not closing at the same rate as for-profit programs is often because the families who use the services go to extraordinary lengths to keep them open in the non-profit sector. They fund-raise for their centres because they feel an ownership of their child's care. However, the days of using bake sales to maintain a public service are coming rapidly to an end.

The record shows child care can no longer be tinkered with. Fundamental reform is needed. In 1990 the coalition released its paper *Making the Shift* to the 1990s. It went out for broad consultation to our own community and related communities. It was presented to all three political parties in the province. Everywhere there was support for the main thrust of the proposals. Those were that child care would become a provincially funded service; programs would be directly funded based on annual budgets reflecting provincial guidelines; recovery costs from parents and

other levels of governments would be the responsibility of the provincial government.

It is our contention that this type of model is the only alternative, first, to stabilize child care and then to begin to build a child care system out of the patchwork of services which currently exist and are not working.

With the province directly funding child care programs, the municipal role would be eliminated. Subsidies and the bureaucracies which go with them would be eliminated. The bureaucracy involved in administering three different funding sources would be gone. We maintain this will provide a more streamlined service and eliminate the layers of bureaucracy and inequity which dominate the service across the province. It would ensure that more public dollars go directly into the provision of quality child care programs.

In a directly funded service, is there room for a line in budget allocations reading "profit"? Even if this was to be a small line, we doubt that there would be public support, outside the for-profit operators themselves, for public funding for private profit.

The coalition supports the conversion program the government has put forward, even though the non-profit sector will derive no direct personal benefit from it. We support it because it will soften the dislocation of parents, children and child care workers in the for-profit sector. It will, in the long run, result in higher-quality care in those programs if staff receive the benefits of full direct operating grants and wage enhancement grants and as parents are given an opportunity to participate in the decision-making in their child's early childhood setting.

But we recognize that child care reform can go ahead and take place without conversion. We do not support the concept of grandparenting the 50% direct operating grant for the commercial programs that currently receive them. This is not good use of public dollars. Moreover, it would require a separate bureaucracy for administering the direct operating grant, a grant which will be eliminated as direct funding of programs takes place.

Before moving to questions, I would like to introduce Kerry McCuaig, who is our executive director for the Ontario coalition, and Carrol Anne Sceviour, who is an executive member and represents the Ontario Federation of Labour on our executive.

**Mr Mammoliti:** Mine is a very quick question. In terms of the government policy, there is another misconception out there that non-profits are the only ones that will benefit, if there is a benefit. Is it only to non-profit, or do other people, other organizations, benefit from our government's policy?

**Ms McCuaig:** I think we should make clear that no non-profit program which is currently in existence is going to benefit from the conversion plan. The only part of the conversion announcement that was made is the \$10.8 million out of the \$75 million which will be phased in to help centres that are in a deficit position. The non-profit sector, ie, the broadest and providing the most care in the province, is receiving the smallest amount of that package. Nor



is there a desire on the part of non-profit programs to take over existing for-profit centres.

We recently did a survey of our programs, asking them if they would be willing to partner a commercial centre through conversion. The response that we got back was that they would have to think very seriously about undertaking any sort of action because of the quality and the type of care which exists in the commercial setting and the effort which would be required on their part in order to upgrade those services. There is very little interest, in fact no interest, on the part of the non-profit programs to take over for-profit programs.

**Mr Bisson:** Before asking a question, I want to clarify something. A statement was made about northern Ontario, which I have to come to the defence of, being a northern member. The comment was made about ceramic tiles from Germany being imported into a child care centre in northern Ontario. That was in Sudbury. I would like to point out to people that it was actually the construction of a complex for women in Sudbury having to do with a number of things, covering libraries to a centre for women and including a child care centre. For people to say that the money was allocated to buy ceramic tiles and all kinds of things I think is a little bit misleading.

**Mr Jackson:** Do not forget the light fixtures.

**Mr Bisson:** I think the light fixtures were in the library, if I remember correctly.

**Mr Mammoliti:** Thanks for your input, Cam.

**Mr Bisson:** The argument is made in regard to—  
Interjections.

**Mr Bisson:** Would you mind? I have the floor, sir.

**Mr Jackson:** I was not talking to you; I was responding to Mr Mammoliti's comments.

**The Chair:** We will continue with the question.

**Mr Bisson:** There are a couple of basic arguments, I guess, when it comes to this whole issue: either you are for it or you are against it. People from the commercial sector who say "We're against the move to the non-profit sector" have a couple of arguments which I think need to be addressed, one of them being the question of quality of care, and the other one being the accountability question.

This reminds me of another debate we had. I remember this as a young child. It is the whole argument of when we went to socialized medicine. The exact same points were put forward at the time. People argued that if we went away from the private medical system that we had at the time, the quality of care would be affected, as well as the whole question of cost being atrocious because governments cannot do anything right anyway, and if the government gets its hooks on it, we know the cost of health care is going to go up. We know now, some 20, 30 years later—

**Mr Jackson:** How many beds have you closed in your riding?

**Mr Bisson:** Half as many as you did while you were in government.

The point is that we take a look now. If we look at the cost question, when we compare our socialized medical system to our neighbours in the United States just south of

us, we spend one cent on administration versus, in some states, as high as 20 cents on administration out of every health care dollar spent. If we look at a lot of questions of cost, we find out that it is much cheaper to operate socialized medicine than it is to operate it in the profit sector. It is not to say that profit is a wrong thing; the question is that governments have a responsibility to deliver services and have to decide which services are for the public good. I take it the debate we are having is that we are now deciding as a society that child care is something which should come under the umbrella of governments.

1510

On those two questions, can you briefly go through a little, just to put it clearly and explain that a bit, because I have a hard time getting into that debate. I understand what people are saying, because there are emotions running in this thing, but I do not buy the total argument that, "If it goes into the public sector it will be at a horrendous cost and government will not be able to run it effectively because, God, you know it can't do anything right anyway." Can you speak on that a little? If you look at some non-profit centres, a lot of them are operated as effectively, and probably more effectively, than some private centres.

**Ms Bertrand:** First, on the accountability question I think you are quite right when you say we are looking at now—I do not think your government is starting the move towards a non-profit system; I think you are continuing what was started in the previous government.

**Mr Bisson:** Yes, under Mr Peterson.

**Ms Bertrand:** Right. It is just continuing along the way. Just as society came to a point 100 years ago that it was time to move to publicly delivered school systems, because it was more effective than piecemealing them, I think we are moving towards the same point with child care, very much what we want. What we in the coalition are proposing is that the system we create be one that is not overly bureaucratized. We want one that remains efficient. Right now, the actual delivery of child care services within non-profit centres, internally, is very efficient, to the point of no administration costs, which may be cutting it a little fine. The point is that non-profit child care programs do know how to deliver administratively cheap programs and maintain high quality and put the money directly into children's services.

In fact, my understanding of the joint review that was carried out between Metro and the province and looked at administrative costs, the non-profit sector fared quite well. Their administrative costs were cheaper than in profit centres in the same region. I think where costs in child care could be reduced, in terms of delivery, is in the three levels of government that are now involved—the double municipal and provincial roles, in some cases—and the fact that centres have three different funding sources. By moving towards a public system, I think we can streamline that and put that money directly into services.

Any public service should have built-in accountability, both to the clients—parents and children who are using the service—and to the taxpayers.

**Mr Bisson:** How can that be done?



**Ms Bertrand:** I think that is one of the purposes of the child care reform consultations, to explore some of those options. Clearly, having local decision-making structures that provide an opportunity to have some decision-making around how funds are allocated and centres are accountable would be one way. I do not have all the answers. I wish I did; it would be easier to write the coalition's response to child care reform, but we are discussing that in our workshops across the province right now.

**Mr White:** I am curious about this conversion issue. The ministry spoke about that this morning. We have had the United Voices for Fair Treatment in Child Care saying it is opposed, it seems, to a conversion process. You are saying it is really a matter of relative indifference to your group. I cannot understand what the concern is with a group—the salaries in non-profit centres are better; they are markedly better. The ratio for children is better. Research clearly indicates that this creates a much better environment for the children, a much higher level of quality.

**Mr Jackson:** On a point of order, Mr Chairman: I believe the ratios are dictated by provincial statute.

**The Chair:** That is not a point of order; it might be a point of information.

**Ms McCuaig:** Minimum standards are dictated.

**Mr White:** The issues around quality have only started being addressed, and I think that certainly the responses to the child care reform package should at least give us some initial views on that.

I am curious. You are stating very clearly that your association is in strong support of a non-profit child care system. The funding mechanism you are introducing or suggesting is a large one, which unfortunately I do not have time to discuss today, yet you have many people who own private for-profit centres who are members of your association, you say.

**Ms McCuaig:** No. For-profit operators do not belong to the coalition. We do have many programs, ie, many non-profit programs, representative boards etc, that belong to the coalition. So we have child care programs, but they are non-profit programs.

**Mr White:** I see. Okay.

**Ms Poole:** Thank you for your presentation today. I think what Mr Jackson was trying to get at was that the Day Nurseries Act provides standards for staffing, what toddlers require, what infants require, and all centres, whether private or non-profit, have to adhere to those standards. That is not really what is at issue here.

The other point is that the minister herself this morning said that when she made the policy announcement she did not make it because of a lack of quality on the part of the private centres. Whether the minister believes this or not, what the minister said this morning was that quality was not part of the government's rationale for making its conversion policy.

**Ms McCuaig:** It may not have been part of the government's rationale, but we support it because it is part of our rationale.

**Ms Poole:** I would like to ask you about that conversion policy. Back when I was first elected in 1987, it seemed to me about 43% of the centres in Ontario were private versus non-profit. Then the last year we were in government, 1990, I think it was mid-30s. Now the latest facts we have from the Ministry of Community and Social Services show 20% for-profit versus 77% non-profit as the number of centres, although I think actually the private centres would be somewhat higher because that did not include anything set up since 1987. It seems there has been a natural attrition and the number of non-profit centres vis-à-vis private centres is increasing anyway, but without this big outcry and without the private centres feeling they have been stressed to the point where they have to go out of existence.

I am just wondering why your coalition would support \$75 million going in—well, say \$65 million.

**Ms McCuaig:** Sixty-seven.

**Ms Poole:** Take out the \$10 million, which you would like to see non-profit centres bailed out. Why would you like to see that amount of money going into the conversion as opposed to lowering fees, creating more spaces, doing it the way it was done before?

**Mr Mammoliti:** Did you not support that a few years ago, Dianne?

**Ms Poole:** I just do not see. If those are the only child care dollars we are going to get over the next five years—and that is what the minister has indicated—is this the best way we can spend that money?

**Ms Bertrand:** I think probably our organization supports it for humane reasons, to try to reduce the upheaval that might be required as we slowly move towards a non-profit system, and as the member over here said, probably for the same reasons you supported it the last time, five years ago I believe, when we went around—

**Mr Mammoliti:** In 1987.

**Ms Bertrand:** In 1987, five years ago, for some of those same reasons. We did not actively go out and lobby for a conversion program, but we are not opposed to it. We are not suggesting that should not happen as a way to ease that process, that transition.

**Ms Poole:** But if it is the only new money coming into child care, is that your first priority for where it should have gone? That is what I am saying.

**Ms Bertrand:** There will not be any new money.

**Ms McCuaig:** I guess, Dianne, the point we are trying to make in our introduction is that tinkering with the system has just come to a dead end. Look at what happened with the 5,000 subsidies that went into the system last year. We did not get the bang we were supposed to get out of them. In fact, we are right now seeing a reduction. So putting more money into the system through subsidies is not going to help. That is why we asked the question, "Name us one municipality that if we put out 100,000 subsidies would pick them up."



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**Mr Mahoney:** Mississauga.

**Ms Bertrand:** But not at a per diem that is viable.

**Ms McCuaig:** And then there is the per diem problem. You cannot go anywhere, we cannot patch it up any more. We need fundamental reform. This may be the first step to the fundamental reform which is needed because this system is in such a crisis it just cannot be patched up any more. The dam is broken.

If we are going to have a viable system which means that there would be direct full provincial funding to every child care program, then it does become a public policy decision we are making here. Do we put full public funding into programs which operate for profit, even if that profit is small? Are we going to be fully funding with public dollars for-profit programs?

That is the choice we are making right now. We disagree with that. We think there would not be public support—well, there is not support from our organization; we will see what the public says—for that to happen.

So the conversion is a first-step stopgap measure, and I also do not think—we never say die—this \$75 million is the end of what there is for child care. But even if it was, if we took the money which is going into the system now through subsidies and this grant and that grant and the next grant and reorganized it in such a way that it cut out whole layers of bureaucracy that were there, we would actually be able to see more and better child care being purchased for public dollars.

**Ms Poole:** I just have two comments, first, that there has been a major distinction between my stand in 1987 and today because my major concern in 1987 was, are you going to give money to private centres if they are not going to be opening up their books and be shown to be accountable? One of the things John Sweeney instituted was that accountability and that opening up of the books process, and to me that makes quite a difference in how you look at the problem.

The second point I wanted to make is, it just seems to me that we are putting the cart before the horse. I agree with you that it would be very good to look at reform of the entire system instead of doing these piecemeal, patchwork bits of work on it. However, when the minister makes a fairly major, substantive announcement and announces part of what she is going to do before she even institutes the process of reform, I do not think that is called a long-term vision. I think it is called panicking: making an announcement that she was not prepared for, that she did not have a strategy in place. We are now at the stage where this morning the minister said, in effect, there is a moratorium on the conversion because they do not have any of their plans in place. I do not think that is a healthy way to approach it, and certainly there is a great fear out in the private sector that they are going to be forced out of business. So it comes down to the fact that if private centres, even centres that you would acknowledge provide quality care, are going to be forced out of business when the government has not even set in place its long-term

policy, I think that is called patchwork and I think it is creating a crisis where we need not have one.

I think Mr Mahoney had a question at this time.

**Ms Bertrand:** There is just one point I would like to make; it came up earlier too. I do not think the concern from the commercial sector arose after the December announcement. The commercial sector has been opposing this whole direction over the last—well, certainly for the length of the existence of the coalition and since the new directions and strategies your government put in place. Their opposition has not just sprung up at the minister's latest announcements.

**Ms Poole:** Oh, I can certainly agree they were not fond of the policy the Liberal government put into place, but I will tell you, I certainly, in the five years I have been elected, never had the outcry I have had in the last three months from parents, from staff, from private day care operators. There is a lot of fear out there that was not there before. By not providing them any new subsidized spaces they are just saying the writing is on the wall; they are going to be completely squeezed out. The figures I mentioned to you showed it was happening gradually by attrition anyway, so why create a crisis where you did not need one? That is the point I was trying to make.

**Ms McCuaig:** I completely agree with you, and we have had several discussions with the government about whether it brought on this process in quite a haphazard way and quite a sloppy way. In fact, going into a reform process and the whole reform discussion without having the conversion plan in place does exactly that; it leaves open fears for parents and for operators who are wondering about their future. We are getting plenty of calls, and we have reported them to the government. At least 30 calls have come to our office from operators wanting to convert. They are not getting the information that they should be getting from the area offices on how to do that. We completely agree: You do not announce a policy and then not have the regulations in place to put it on line. So yes, we can agree there.

**Ms Poole:** Oh, good.

**Mrs Cunningham:** I guess my great concern as a representative of the public here is to go out to the public and say that since 1988 we have increased the cost of providing child care in the province of Ontario by 166% and yet we have fewer children in licensed spaces, and I am sure that is of great concern to all of us.

**Ms McCuaig:** Sorry, Dianne, why do you think we have fewer children in licensed spaces?

**Mrs Cunningham:** There are fewer children now in licensed child care than in 1988.

**Ms McCuaig:** You mean percentagewise?

**Mrs Cunningham:** No, real numbers, gross numbers.

**Ms McCuaig:** Could you share those figures with us, please? They are not the figures we get from the child care branch.

**Mrs Cunningham:** The delegation before you gave them, and it is not the first time we have heard it. If it is

incorrect, then the ministry can come forward and say so right now. The ministry is here. Let's hear it.

**Ms Bertrand:** Could we see what those figures are?

**Mrs Cunningham:** I do not want to ask a question if it is incorrect.

**Mr Jackson:** Not on our time.

**Mrs Cunningham:** We will do it later. That is a challenge. If it is wrong, I am the first person to be happy to go out—tell me it is wrong.

**Ms Bertrand:** It is wrong.

**Mrs Cunningham:** All right, so there are more children now.

**Ms Bertrand:** Yes.

**Mrs Cunningham:** Given the 166% increase, I would be interested in seeing how many more, because that is part of my responsibility too.

With regard to your comment on two things, quality and administrative costs, I would ask you this question with regard to quality. In 1984, the government of the day stressed enforcement of standards. We know the Day Nurseries Act has not been changed. I am wondering what Ontario study that you are aware of did a survey of the quality of care in profit versus non-profit in Ontario since 1984. I wonder if you could tell me about that.

**Ms Bertrand:** There was a study done in Toronto. I am trying to remember dates and names. There have been studies, and they are summarized in the province's survey of quality done by Gillian Doherty. One of them looked at contraventions to the Day Nurseries Act regulations, 1987; Sharon West did it.

**Mrs Cunningham:** Since 1986?

**Ms Bertrand:** Yes, this is all 1987, 1988. That was clear. There was a national study done for the—

**Mrs Cunningham:** No, just Ontario.

**Ms Bertrand:** But it included Ontario. Each provincial office responsible for licensing enforcement of child care centres was surveyed, and Ontario was included—

**Mrs Cunningham:** Since 1984?

**Ms Bertrand:** For the national task force on child care, which came out with its report in 1987. I think it was struck in 1986. It was also clear.

**Mrs Cunningham:** I am very much aware of the research, and I have not been convinced.

**Ms Bertrand:** Then there were studies done for the Katie Cooke task force, which included Ontario.

**Mrs Cunningham:** I am aware of that one too.

**Ms Bertrand:** That showed that salaries were 30% lower.

**Mrs Cunningham:** I just wondered if there was anything more recent, since it took a couple of years to get the enforcement out. I was actually part of it, so I just do not at all share your observations, that is all, from my work in the child care branch.

**Ms Bertrand:** Okay. The research is fairly clear on it.

**Mrs Cunningham:** Not recent research; I would say that clearly. Again, the government will get asked the same question, so it can take note of this.

The next one is the point that you made on administrative costs. Where has the research been on the costs of administration of non-profit and profit in the last four years?

1530

**Ms Bertrand:** In January 1992 the joint review, I believe, was made public.

**Mrs Cunningham:** Joint review of what?

**Ms Bertrand:** December 1991—it was about a nine-month project to look at the disputed real costs of child care in Metro Toronto. It was carried out by an accounting firm. I am sorry, I have forgotten the name.

**Mr White:** Coopers and Lybrand.

**Ms Bertrand:** Right, that was the name of the accounting firm. It looked at the reasons for child care costs, what it cost between municipally directly operated, commercial and non-profit in Metro Toronto.

**Mrs Cunningham:** Okay, so the strong evidence of both of those things has been two Metropolitan Toronto studies. I am not aware of anything beyond that, but I did notice later on in the day that in fact—I guess Martha Friendly is on today. She knows what I am going to ask her now, so she has lots of time to do her homework. I really am concerned about the attitude presented by people going around this province saying there is a difference in quality, because I am a firm believer that since 1984 the government of Ontario has been proven to have some of the highest standards. The downside was that there was a tremendous growth in child care from about 1987 to 1990. Basically the child care branch, the area offices and the regional offices were not given the resources—they did not think so, anyway, and I support them on this—to do the kind of enforcement that needed to be done.

It is my understanding from the audit branch that I have worked with in the past that in fact the standards have been dealt with. Yes, we have a few private, non-profit centres—I am not aware of which ones they would be; it would not be very many in the province in the last three or four years—that we have had some difficulty with. The biggest difficulty is the province not having the courage sometimes to close them down. I think you share my concerns about that. It is very expensive to go through closing down a child care centre. I give the province accolades where it has been able to do it.

As for the administrative costs, I do not think there is a good study on that at all. As a matter of fact, the three centres I am involved in right now that are converting, not in London but in central northern Ontario—in fact the ministry is asking them to put more administrative staff in to meet what they call their requirements. I will be curious to see what is happening there.

**Ms Bertrand:** Yes, I suggest you look at that Metro review, because that is recent and I believe—

**Mrs Cunningham:** The problem is that I come from southwest Ontario. Most of the representatives in the



House are not from Metropolitan Toronto. We look at the costs as being somewhat exorbitant here under all circumstances anyway, and rural Ontario, when they come in to present their case here, would not even look at a Metro study. That is why I raise it. I think it is important that you quote it, because it is valuable—

**Ms Bertrand:** Yes, 40% of the public money on child care is spent in Metro Toronto, so it is an important study.

**Mrs Cunningham:** I think it is valuable for Metropolitan Toronto, but we are trying to make a decision here for all of Ontario. We are looking at decisions where parents are asking for a choice. Where we have something that is working my great concern would be, at least in the short term, that we not disturb it, because I do not think these are times when we can ask the taxpayers to put this kind of money into conversions and not new spaces. That is where I am coming from. I may even share your point of view in the long term, but certainly in the short term I do not think this is a strong stand that we can take in this province. It is just not affordable.

**Ms Bertrand:** In terms of the question on enforcement, would you suggest spending more money on enforcement?

**Mrs Cunningham:** I suggest that the standards being met at this point are more than reasonable with regard to the child care branch and the government itself, as opposed to maybe even five years ago. I think the government of Ontario can probably answer the question better than I can at this time. I have not talked to them in the last six months, but I know a couple of years ago they needed more time spent on enforcement.

Right now there is no new money, so to spend your money in developing new centres as opposed to keeping the centres going that you have now is in my view a waste of money, because we should be bringing on new spaces in new ways. Again, we should be looking for private support. If you are looking at child care in the workplace and asking the private sector to pay for part of that and to subsidize its workers, there has not been, I do not think—and again I will ask Martha, because I think it is important—a big takeup of that, but where it does exist, I do not think we should be destroying it.

**Ms Bertrand:** There is very little commercial child care in workplaces. Most of the child care that exists in workplaces is in the non-profit sector.

**Mrs Cunningham:** But there is some, and there are some businesses that are doing that work on behalf of their employees, and my point is that I do not think we should disturb it. I think you should be saying that too.

**Ms Bertrand:** There is very little commercial child care in workplaces. Most of it has been picked up by the—

**Mrs Cunningham:** There should probably be more. It is more convenient for families, there is no doubt.

**Ms McCuaig:** Child care in workplaces may be more convenient, but the point is that when workers and companies develop workplace child care, they use the non-profit mode in order to bring it on line. They do not go and hire a

commercial operator to develop a child care centre in the workplace.

**Mrs Cunningham:** I think the point you should be making is that most of them use the non-profit mode.

**Ms McCuaig:** Almost exclusively, Dianne.

**Mrs Cunningham:** And that makes it right?

**The Chair:** Thank you, Mrs Cunningham. I would like to thank the—

Interjection.

**The Chair:** Order. Thank you for appearing before the committee today. Your information was very useful.

#### ASSOCIATION OF DAY CARE OPERATORS OF ONTARIO

**The Chair:** The next presentation will be made to the committee by the Association of Day Care Operators of Ontario, Judith Preston, president. Good afternoon. Welcome to the committee. We appreciate your taking some time to come and speak with us today. If you would introduce yourselves for the purposes of Hansard, you will have 40 minutes to make your presentation.

**Mrs Preston:** We are very pleased to be here. I am Judith Preston, the president of the Association of Day Care Operators of Ontario, and with me is Terri Watt, who is an owner-operator from Burlington, Ontario. She is a member of our executive.

We were asked here to discuss the impact on women of the government's policies relating to independent child care centres in that these policies will impose further barriers on women's full and equal participation in the employment market. We see at least three ways in which the current government policies impact upon women's positions in the marketplace.

Of course, the immediate impact affects the person who owns and operates a child care service. There are few, if any, other sectors of business which have such an overwhelming number of women operators. By eliminating the opportunity to own a centre, they stifle the potential for growth and deny women another avenue of self-determination in business. We have seen the number of independent centres erode, from over 900 in 1985 to the current 650, give or take a few. We can only believe that this trend will continue under the current regime. Government policies have been effective. Entrepreneurs are willing to battle the marketplace. They are willing and able to cope with a fluctuating economy, but few among us have the energy, capital and drive to battle the business world as well as enter into competition with a government-sponsored opposition. The women who are in the system will lose everything.

Let us be more specific. The current policy is to provide funding for the purchase of used toys and equipment at depreciated value. You may translate this to mean that the government has established an arbitrary value, not to exceed \$1,000 per licensed space, as the purchase price of the entrepreneurial and management skills, the net value of an industry dominated by women. Is this fair? I think not.

To add insult to injury, they say taxpayer-funded agencies do not pay the former owner the full value, the full \$1,000; they may use the funds to buy new toys and equipment. The



chances that any operator will receive the full \$1,000 per space is very small.

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The Kapolas-Edwards Child Care Conversion Incentives Study detailed better than I can the issues facing the independent operators. They own or lease buildings. Investment was required to prepare these locations for child care. The requirements of the Day Nurseries Act and the health, fire and building codes are extremely specific. The equipment and toys are certainly worth more than their depreciated value.

Then we come to the intangibles: reputation, future earnings, seniority, education and career expectations, equity, time and effort, loss of salary and benefits, mental distress for being forced out of business by the government, for loss of livelihood and dreams, and the list goes on and on. This government is refusing to recognize these issues. Quite frankly, their refusal to be morally and ethically responsible is more distressing than their actions.

Then there is the impact on the women and men who work in the independent sector. The government and those they have confused will tell you that jobs will be available in the new reformed system. True, but—and this is a very large “but”—not immediately and not the same job. Staff will lose job seniority and benefits. They will lose the choice of employment. Please do not fall into believing that staff who work in the independent sector do so because there was not a position in the non-profit sector. That is just not true. Staff are people who have made conscious decisions to work for an independent operator. They wish to remain employed. If the government continues down this path of destruction, these people will lose their jobs. For the lucky ones, the loss will be only that of choice.

The impact cannot be stressed enough. Jobs will disappear. The expertise lost may never return to the sector. It will be a double loss: The individuals will be unemployed, and the sector will lose a valuable asset. Please remember that these numbers are actually individuals with homes, families and children of their own. They are not statistics. The lack of jobs will certainly impact on their ability to participate in the employment marketplace. Remember that not only are we losing our businesses and jobs for this unwanted and unnecessary upheaval; we are paying for it through our taxes. We are all paying.

It is stated that under a government-funded system—or, more correctly, a taxpayer-funded system—staff will be better paid and that this will result in a higher-quality program and a more stable staff. Higher-paid teachers in our public school system have not ensured higher-quality education. When our country ranks 21 out of 22 countries, there is something wrong with the quality of education. When our country is experiencing a 30% dropout rate, there is something wrong with the quality. Our public schools are extremely expensive and our teachers are very highly paid, yet we still rank poorly against other countries. Is child care going to be different? Not likely. Will a higher-paid system ensure that more trained educators stay in the system longer? This has not happened in Sweden. Why should it happen here?

The third group to feel the impact is the women and their families who use our services. They have not necessarily chosen the centre because it was independent, although some do, but because of its program, hours, services, location etc. But if that centre either converts or closes, they will feel the impact. Either way, some things about the child's day will change. They may have to locate another centre. The program philosophies may change if the centre converts. If the child care arrangements these parents have fail, then it is possible that they too will lose their ability to participate in the employment marketplace.

We were asked to discuss the role of the independent child care centres, their history, development, quality and accessibility. Independent child care centres have existed in this province since before the Second World War. Historically, independent centres have been the first to expand services into areas of need. The highest number of licensed centres was reached in 1985, with 940 independent centres operating. Currently there are 650 independent centres in the licensed sector. Their role in the community has been to provide a high quality of service to the children and parents.

Most operators feel that they are very front-line. They are concerned about the day-to-day programming and operation of their centre, not about its historic position in society.

The issue of quality in child care in Ontario is very much a red herring. The minister has been unable to say that the independent operators do not provide good service. Statistics show that as a group we are accountable. I refer you to the Levy-Coughlin report of 1990; that referred to the direct operating grants, by the way. In the quarter ending September 1991, 95% of independent centres had clear licences, while only 94% of non-profits had clear licences.

Municipalities from Hamilton to Halton have written to the minister stressing their concern about the discriminatory practices. They all state that in their communities the quality of care provided by the independent operators is no different from that found in the non-profit sector. This is also stated by Metropolitan Toronto in its Blueprint for Child Care in 1986. Quality is not the issue.

Accessibility? Independent operators are usually the first into an area where there is a need. They traditionally develop a centre quicker and more affordably than a non-profit agency. Accessibility is not a question of auspice but rather one of availability of subsidy dollars. This government has shown no inclination to rectify that problem.

We question this government's and this province's ability to provide the subsidy spaces in the future. They cannot afford them now. In the future they will have the additional capital costs the independent operators now cover. As well, the reformed system will require even more taxpayers' dollars for administration and increasingly high capital costs.

It should be noted here that while government spending increased by 43% on child care in the past three years, the actual number of children served decreased by 12%. At the same time, waiting lists grew and grew. Accessibility is controlled by the manner in which government spends its



child care dollar. If the taxpayers' money is directed towards capital costs and the destruction of service which exists, the number of children with access to the system will decrease.

Also for discussion is "the impact that conversion of these centres into non-profit will have on the public's right to choice, on the economy." It is the parents' right and responsibility to choose what care their children will have. Under the reformed system that right will gradually be eliminated. Even now, as the government's preference for non-profit is pushed, parents are being denied the right to choose. Staff at the regional levels are directing parents into non-profit centres even when a parent's preferred choice is an independent centre and that centre has a space.

If this is happening now, we do not see how it will not happen in the future. We see a system where parents will be told which child care they may use, just as we are now directed to a specific school. Yes, it is true that parents can change their child's school, but it is not easy. Why should we take a regressive step? A high-quality, affordable, accessible system is in place. Why should we spend countless dollars reforming what does not need reform?

We believe that this government's preference for a non-profit system and a universal system is detrimental to the province and the society as well as to the users'—parents'—right to choose.

Fiscally, we cannot afford it. It is incomprehensible to me as a taxpayer how it can even be considered. The simplest examination of the numbers will tell you that the cost implications are absolutely horrendous. Both operating costs and capital costs could run into the billions. Taxpayers, from kids working part-time to seniors, will have to foot the bill for this colossal mistake. The costs could run to over \$1,000 per year in additional taxes for each and every taxpayer in this province.

Every country that has tried this system has failed, from Britain to Sweden. In October, Sweden did away with the public and municipal monopoly on child care centres. An operator may now open an independent centre. The children attending are eligible for all government grants. From a paper examining child care in Sweden, I quote:

"Profit-making day care was banned until last month. Now it is okay to earn money on day care centres. In Parliament in November even the Social Democrat Party voted for breaking up its own rigid rules regarding child day care."

Sweden has recognized it has made a mistake. Why can we not learn from other people's mistakes?

Child care, like many other systems in this province, needs less government, not more. Government has a place in setting standards, monitoring and licensing. There is a role for government in funding of children and families in need, but the focus must be on assistance to the user, not the provider.

This country and this province were founded on the principle of entrepreneurship. We take responsibility for ourselves and our actions. If it is our right to have children, it is our responsibility to raise them ourselves, not the government's, not society's. For every right we have, there

is an equal, balancing responsibility. If we have the right to accept a universal child care system, it is our responsibility to cover the costs for our child, not for the society to cover the costs for all children. If the right or privilege is given to an individual, he or she owns the responsibility as well. To take away the responsibility is to relegate the adult to the position of a child. For the government to take over responsibility for child care is to place the parent in the position of a child, not a responsible adult.

When a system is put in place that separates the two sides of the coin, problems will develop. Privileges are abused and responsibility is forgotten. This is not 1984, as was noted before, and the citizens of this province do not need the government to walk them through life.

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**Quality, affordability, accessibility:** These issues are the areas of concern. Is there only one way to achieve these goals: first destruction, then rebuilding at horrendous cost? There are other ways that do not steal investments of time, energy and money from the citizens of this province, ways that do not eliminate high-quality service in the hope that some time in the future they may be replaced.

In October 1990 Mrs Boyd stated her government was not out to eliminate the small independent operator, that she believed a compromise could be found. Some compromise. Small business is being eliminated at a time when this province can ill afford to lose more jobs and more taxpaying businesses. It is indeed unfortunate that the jobs lost will be those held by women. It is indeed unfortunate that the lost services are those used and needed by other women to enable them to stay in the workforce. Thank you.

**The Acting Chair (Mr Mahoney):** Thank you. The Liberal caucus is first, I believe, this time. Mrs O'Neill, we have about eight minutes each.

**Mrs Y. O'Neill:** We had a presentation this afternoon that quoted figures that are not identical to yours and they were disputed by the ministry and other presenters. I wonder if you could give us the backup to the figures you have used in your brief on page 6 regarding spending increases of 43% and children served decreasing by 12%.

**Mrs Preston:** I have that at home. Unfortunately, it is not one of the things I brought with me. I would be glad to bring that with me tomorrow and make it available to you.

**Mrs Y. O'Neill:** That would be helpful, since it seems to be in dispute.

I would like you to say a little more about the statement you have made both on page 3 and page 2. You are talking about jobs disappearing. Have you any figures on that? I think your statement regarding intangibles is excellent, very inclusive. I think we need to emphasize jobs disappearing. Can you talk a bit about that, who you think will be most affected, how many jobs, how long the re-entry period may be, things like this?

**Mrs Preston:** The re-entry period could be long because right now there are no job openings. If a centre closes, centres staying open are laying off staff.



**Mrs Y. O'Neill:** How could the centres that are staying open lay off staff? We have regulations that talk to staffing. Can you say a little bit about that?

**Mrs Preston:** A centre can be licensed for 56 children, say. It would require a certain number of staff for those children. If they go down a group more than eight children, more than 16 children, depending upon what their group is, they can close down a section of that centre pending children to fill it. So in the interim they are not required to maintain the staff for those empty rooms.

**Mrs Y. O'Neill:** You are saying some of that is happening now.

**Mrs Preston:** Some of that is happening now. The statistics we are working from are Ministry of Community and Social Services statistics and we know they are a little bit behind. The last figure I had was that 74 centres in the independent sector had closed in the first nine months of 1991, I think. I do not have the number of spaces, but certainly that would represent an operator for each centre, a cook, depending on the number of children, the number of groups in there; certainly a minimum of four or five staff per centre. You are looking at a minimum of—what?—400.

**Mrs Y. O'Neill:** It is very helpful that you give us those kinds of figures. We have not had a lot of people talk to us about the way this plan is being implemented, because, as you know, we have some moratorium. You have suggested that the \$1,000 regarding the conversions for the equipment and toys would not really come to \$1,000. Would you say a little more about this? In my humble opinion it is a rather unfair way to deal and it certainly does not include many of the other intangibles you have mentioned. Fairness is an issue here, for sure.

**Mrs Preston:** You have to understand that what I am going on is conversations and gleanings etc. There is, as you know, nothing down in writing for the conversion package, but what we have been informed is that the \$1,000 for used toys and equipment is on depreciated value. Now, for most of us who are on subsidy or purchase-of-service agreements there are guidelines that we have to follow in terms of what equipment is kept on the books, how long you depreciate it etc. Most of the items we purchase are less than \$1,000 per unit per year. Therefore, after a year it is considered, according to your books, to be fully depreciated, so that your Fisher Price toys, even though they are still in use, even though they are still good, are considered to be fully depreciated. It is only if you put in \$15,000 of playground equipment, something like that, that it would remain on your books for more than a year.

If you look at just strictly what is on the books, the value would have no bearing as to what it would cost to replace that equipment, even at a garage sale price. There is no relationship one to the other. As we understand the process, the \$1,000 goes to the non-profit agency that is being set up or taking over, however it is managed: the former independent centre. They get the \$1,000 and they negotiate with the former owner to come up with the price. When they are told that they get the \$1,000 per licensed space regardless of how much they have actually paid to

the independent operator, there is not an incentive for them to give as much as they possibly could.

**Mrs Y. O'Neill:** You did very well in explaining that. Tell me, are you involved in the consultation process? We were told this morning by the minister that this whole process is going to—

**Mrs Preston:** Which consultation process?

**Mr Mahoney:** Any consultation process. Pick one.

**Mrs Y. O'Neill:** Yes, that is one answer. We were told that the Association of Day Care Operators—you were not particularly mentioned—the people who were now operating the, as we are told we should call this, for-profit group of day care settings are being consulted in implementing this new policy. Have you heard of any of those consultation processes?

**Mrs Preston:** We were asked to sit on a committee. I and one of our other executive directors attended. There were four independent operators there as well. United Voices was also at the table. There was the coalition. There was union representation. There was ministry representation. I would say we formed, at a guess, less than 25% of the representation on a committee that is talking about how to close down our businesses. We protested. We have been saying for quite a while that you need to talk face to face with the operators individually. It should have been done before December 2. In fact, it was done in 1989, but the minister's office does not appear to be aware of that study. They are now.

**Mrs Y. O'Neill:** That is fine, thank you.

**Ms Poole:** Just as a supplementary to Mrs O'Neill's question about the consultation, this morning the minister indicated that there was consultation prior to December 2, prior to her announcement. She said she met with people as a private MPP and that there were no surprises by the December 2 announcement. That is not my understanding. Was there any consultation with your organization by the minister prior to that announcement?

**Mrs Preston:** No. We sat on a group called the core working group for child care reform that was set up by the former minister. We were one of 12 people. United Voices was not a part of that group. There was no staff or parent representation on that group. The mandate of that group was to look at what type of non-profit universal system we were to set up. We did not discuss, and were not allowed to discuss, how we got from a system where 30% were independent sector businesses to a fully non-profit sector.

**Mrs Cunningham:** Could you tell us about the Levy-Coughlin report of 1990, just where it was done?

**Mrs Preston:** It is in my briefcase. It is the big white one. It has got all the information on it.

**Mrs Cunningham:** I will just go on. I thought it was interesting to say that, in the quarter ending September 1991, 95% of independent centres had clear licences while only 94% of non-profits had clear licences. I wonder if you could explain it to the committee what that really means.



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**Mrs Preston:** A clear licence is a centre that is meeting all the requirements of the Day Nurseries Act according to about a six- or seven-page checklist that the ministry consultants do when they come in for your licensing inspection.

**Mrs Cunningham:** This would be done both in non-profit and in private?

**Mrs Preston:** Yes. The procedure is the same regardless of what auspice a centre operates under. We have the same parent information posted.

**Mrs Cunningham:** The checklist that came out.

**Mrs Preston:** Yes. Like I say, the checklist the consultant does is the same for both sectors.

**Mrs Cunningham:** Do you have the report in front of you? Is this one done all over Ontario, both rural Ontario and—

**Mrs Preston:** Yes. I do not have it with me, but again, I can bring those pages with me tomorrow.

**Mrs Cunningham:** That is fine. It is most helpful. I was pleased with your presentation and appreciative of the paper you gave us on family day care in Sweden. I was not as up to date on that as I would like to be, but thank you very much for helping us out.

I was also interested that you stuck to the topic that it has an impact on women. I think we all are aware that if the government moves in this direction, both the operators and the workers are in difficulty, there is no doubt, with regard to future employment. I wondered with regard to the consultation that is going about—the dates have been set, by the way. Are you aware of when you will be having your consultation in your community?

**Mrs Preston:** My community does not have one. I am doing a presentation on the part of our association in London, or at least I have requested a time. I have not had it confirmed as yet, but as a taxpayer, I am going to have to go a good hour from my community to be able to make a presentation.

**Mrs Cunningham:** Could I ask you if you will be expanding your input to the issues that were behind us about two years ago as we looked at how we could provide more workplace child care, more school-age child care in or outside of school settings and more licensed child care in homes? Will you be talking about any of those, since I think those are the issues of parents?

**Mrs Preston:** You mean in terms of our presentation at the consultation?

**Mrs Cunningham:** Yes.

**Mrs Preston:** No, we had not planned on it.

**Mrs Cunningham:** I think the issue now has become a phasing out of the private sector in the provision of child care, and I think that is unfortunate. If the government really wanted to answer the question, "What role should the provincial government play in the planning and management of child care?"—that is the first question, by the way. If you take a look at the last page, have you seen this yet?

**Mrs Preston:** Yes.

**Mrs Cunningham:** I hope you will talk about that, because my great concern is we are going to just be on this issue. This committee is looking at it now, obviously, but I hope the presenters will talk about how we can discuss the role of the provincial government, the role of the local community and how we can expand the service in a responsible way, as opposed to sticking with what I think is a red herring, at least for most parents in Ontario today.

It is not with regard to my views or your views, and I think the majority of people coming before the committee will say the government is in fact taking away a choice. I guess my question is, I hope you will take the opportunity to expand upon your brief so we can expand beyond this, because I think the questions are those that were asked a decade ago and we have come a lot further than what this consultation seems to be about.

**Mrs Preston:** I know our brief does expand upon what is in the document, not necessarily in the directions you are suggesting, but it is certainly something we can look at in the interim.

**Mrs Cunningham:** I hope you will. The other question my colleague was asking earlier was with regard to the indirect subsidies of non-profit centres that are finding themselves in difficulty. Are you aware of any of that?

**Mrs Preston:** I know there is \$10.8 million that was allocated for what we like to call fiscally irresponsible non-profits. We have a great deal of difficulty understanding how any organization that has capital grants, startup grants and more than twice the amount of wage enhancements that our sector gets, still finds itself in financial difficulty, but I know there is \$10.8 million. I assume the minister had some rationale for deciding on \$10.8 million for that fund. So there have to be some centres somewhere that at least need that amount of money.

**Mrs Cunningham:** You are not aware of any specifically, I suppose.

**Mrs Preston:** No. Obviously the centres I work with are essentially private, independent, so I would have to say I really do not know of any specific—other than the ones we read about in the paper. There was one in Toronto last summer that had a considerable amount of difficulty, just that type of information.

The Levy-Coughlin report was prepared for the child care branch, Ministry of Community and Social Services, March 15, 1990. Its full title is A Short Term Evaluation of the Direct Operating Grants.

**Ms Poole:** Mr Chairman, could we ask the ministry for copies of that report for tomorrow?

**Mrs Y. O'Neill:** Someone, I believe, provided an excerpt from it, as you may have found out, in a presentation, so we have the title. You have provided it to us, which is very helpful, in this package, but I think it would be great if we had at least one copy of the report.

**Mr B. Ward:** I would like to thank you for your presentation. I always appreciate it when individuals take the time from their busy schedules to come down and make us aware of their concerns.



When I look at your brief, there appear to be some differences in what we as a government see should be happening to day care and what your organization feels should be happening. What I would like to try to find are perhaps areas where you can consider supporting what our government is trying to do.

I noticed in your presentation when you are talking about choice, you say, "We see a system where parents will be told which child care they may use, just as we are now directed to a specific school." I can give you assurances that our government has no intention of telling parents which day care centre they should be using, so I hope you can support us in that if there are 10 non-profit centres in my community, as a parent, if space is available, I can pick one of those 10. I am not going to be that I have to go to one that is in my district, as you referred to in school districts. I hope you can support us in that.

The other point is that I think in a non-profit system there is room for profit. Say we achieve our goal of universal day care; that is, funded by the province directly in the non-profit sector. As a parent, if I want to pay an individual owner-operator who is running a for-profit centre for the privilege of taking care of my child—I recognize that my taxes are going to the non-profit centre, but I still make the conscious decision that I want to pay this for-profit owner-operator—I can, similar to the scenario, and I have heard it alluded to, where we have a public education system and private schools, if I want to pay to have my child go to that private school, he or she can. Do you not envision that type of system evolving in Ontario?

**Mrs Preston:** No. Certainly I cannot support you or your government's decision to ration parents' choice. If there are 15 centres out there and 10 are non-profit and five are independent, the parents should have the right of placing their child where they want. Our focus is and our belief is that any funding the government should do should be funding the user, not the school or the centre. The parent is the one, and if the parent wishes to send her child to centre 11, which happens to be an independent centre, the parent now has that right to do so, and it should not be denied. I cannot support any elimination of parental choice.

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**Mr B. Ward:** And we are not.

**Mrs Preston:** Yes, you are. You are saying that the parent will not be able to send her child to the independent centre.

**Mr B. Ward:** No.

**Mrs Preston:** Any new subsidies—

**Mr B. Ward:** Just a clarification, Mr Chair. Just for clarification, you say in your report, "We see a system where parents will be told which child care they may use, just as we are now directed to a specific school." We are saying that is not going to happen.

**Mrs Preston:** Would you mind if I have some reservations, please?

**Mr B. Ward:** Maybe the Liberals and the Tories will implement that system, but we will not.

**Mr Mahoney:** You have to take Brad's word for it.

**Mrs Cunningham:** Anybody who needs even partial subsidies cannot go—

**Mr Mahoney:** He has his finger on the pulse of this government, I want you to know.

**Mrs Preston:** I am sorry. I do not believe that it will happen.

**The Chair:** Order. Do you have further questions, Mr Ward?

**Mr B. Ward:** No, I will pass to my colleague.

**Mr Bisson:** There are a couple of things in your brief you had mentioned that I thought would be a little bit interesting just pointing out. One is that the change in direction of Sweden was caused more by a change in political party and obviously an ideology going in an opposite direction. It was not for any other reason than a change in political parties that happened in Sweden. It was not based on any kind of report.

The thing I would like to get to is that I come from a community that has basically only commercial day care. You probably know the operator well, a person who has been in the day care area for a number of years, who provides what I believe, because I have no reason not to, is quality day care for the people in my community.

My understanding, in the discussions I have had with the Ministry of Community and Social Services and also with this operator, is that the way the conversion is being explained, sometimes by the opposition but also by some of the presenters, is not quite correct. What we are trying to do is come up with a formula that will be fair both to the commercial centres that choose—and the key word is "choose"—to convert to non-profit and those that decide not to do so, to have some sort of a system by which there is some recognition for what happens when you do convert and the amount of money that you have invested in those centres and making sure that the commercial centres are able to get what is fair, but at the same time that the government does not pay through the nose either, and there is a balance in that.

I do know that there is a number of—

**Mr Mahoney:** Choose or go broke.

**Mr Bisson:** Excuse me, Mr Mahoney. I do have the floor.

**Mr Mammoliti:** Why do you consistently—

**Mr Mahoney:** Choose or go broke. That is the choice.

**Mr Mammoliti:** Why do you consistently—

**The Chair:** Order. Mr Mammoliti. Mr Mahoney.

**Mr Mammoliti:** Is there something wrong with you?

**Mr Mahoney:** At least I am consistent.

Interjections.

**Mr Bisson:** If you had been very consistent, Mr Mahoney, you might be leader of your party.

Anyway, the question—

**Mr Mahoney:** What was that? Was that a shot?

**Mr Bisson:** I think so, yes.

The point is that in the discussions I have had both with local people within the Ministry of Community and



Social Services up in my riding and with the private operator, there are a couple of discussions that go on. One of the things is in regard to the amount of money to be made in day care. She freely admits that there is not any money to be made in it in that particular situation. She has no competition to talk about within that particular area. In fact, Timmins is one of the places where a private day care centre had to close down, and it closed down not because there was competition coming in from the non-profit sector; it closed down because she could not make a profit. She made a business decision based on the fact that there was nothing on the bottom line to keep that thing open.

I also know, by some of the information I have gotten together in order to get ready for these hearings, that there are a number of people within the private sector who operate commercial day centres who actually favour what the government is doing, because I do know from discussions with people within the private sector that there has been a lot of controversy on this whole issue for the past eight or nine years. Is it not true that really this has been an argument that has been ongoing for about eight or nine years between the private and non-profit sectors in regard to what the policy direction would be for day care?

If you can just answer that first. I know had a bit of a preamble. The question is, just so I can put it succinctly, how long has this whole discussion been going on in regard to commercial versus non-profit? You have been in the business for a long time. How many years?

**Mrs Preston:** Late 1960s.

**Mr Bisson:** Yes. Is it not true that there really has not been a coherent policy in place by the provincial government to adequately deal with the questions of day care within Ontario?

**Mr Mahoney:** This is coherent?

**Mrs Y. O'Neill:** No planning.

**Mr Bisson:** I am asking, has there been a policy that is really dealing with the needs?

**Mrs Preston:** It depends on what needs you are talking about. Over the last 20-odd years I have been in child care, we have grown tremendously in terms of our standards. It would appear, if you want to look at it, that the attempt has been on the part of the government to be a global setting of standards and priorities or some standards for sure, and that child care and the provision of child care has been bottom-up as opposed to top-down. This appears to be a top-down attempt.

**Mr Bisson:** But as far as coherent policy, to be able to deal with—

**Mrs Preston:** I do not believe that this is a coherent policy.

**The Chair:** Order.

**Mr Bisson:** I was interrupted somewhat; I would ask for another couple of minutes.

**The Chair:** I am afraid you are over the time allocation, Mr Bisson.

**Mr Bisson:** I still have a minute, according to the clock.

**Mr Mahoney:** Come on, what did I do?

**The Chair:** Thank you very much for your presentation today. The committee appreciates your taking the time to come and speak with us.

**Mrs Preston:** Could I have a minute and a half to respond to some of the comments that were made, if I talk real fast?

**The Chair:** Unfortunately the time has expired and the Chair has no latitude in these matters.

**Mr Mahoney:** I move the deputation be given a minute and a half.

**Mrs Y. O'Neill:** I think that is only fair.

**The Chair:** Do we have unanimous consent?

**Interjection:** No.

**The Chair:** No.

**Mrs Y. O'Neill:** Yes.

**Ms Poole:** Okay. Give the deputation a minute and a half and we will give Gilles one minute to finish his.

**Mr Mahoney:** No, no.

**Mrs Y. O'Neill:** That is very unfair. You are supposed to be asking questions instead of making statements.

**The Chair:** I am sorry. Thank you very much for your presentation.

**Mrs Preston:** Thank you very much.

**The Chair:** Do you have a point of order, Mr Bisson?

**Mr Bisson:** Yes, I have a point of order. You will probably rule me out of order. The point is that we have people coming to present to us and yes, we have to hear what they have to say. I think it would be appreciated on the part of the people coming forth that all sides restrain from heckling across the table, our side and your side, so we can hear what people have to say and not fill in each other's time.

**Interjection:** Good point.

**Mr Bisson:** I do not think this is—

**Mrs Watt:** So true. It is our livelihoods you are playing with.

**Mr Bisson:** That is right.

**Mrs Watt:** It is very difficult to sit here and listen to bantering going back and forth.

**Mr Bisson:** Exactly.

**The Chair:** All members are aware that interjections are always out of order.

**Ms Poole:** Mr Chair?

**The Chair:** Yes, Mrs Poole.

**Ms Poole:** Earlier I had asked a question relating to the United Voices presentation when they cited \$350 million for the five-year package and we had asked the ministry to clarify for us tomorrow morning. United Voices have given me a breakdown, and it certainly appears to me from what they have given me that it would be \$350 million total over the five years, because what they have done is, out of the \$105-million announcement they have taken as ongoing annual expenses the \$30-million wage enhancement



funding for non-profit workers, because that would have to be provided \$30 million per year for five years—

**The Chair:** Perhaps, Mrs Poole, this would be more appropriate when the ministry is here tomorrow morning and we can question them more specifically about that.

**Ms Poole:** Right. I just wanted to put this on the record so the ministry could address this. I am almost finished—and \$31-million wage enhancement funding to staff in private centres who convert to non-profit, and they have annualized that for five years, plus the one-time shot, and that adds up to \$350 million. Perhaps the ministry could take a look at those figures to tell us whether that presents a true picture.

**The Chair:** I am certain the ministry will take your comments into consideration.

**Ms Poole:** Thank you, Mr Chair.

1620

#### HUMBERSIDE MONTESSORI DAY CARE AND VILLAGE NURSERY

**The Chair:** We have one cancellation on the agenda. You will note that. I am told that the Humberside Montessori School, represented by Felix Bednarski, is here and ready to make its presentation. Good afternoon. You have been allocated by the committee 20 minutes to make your presentation now, but the members always appreciate some time to have some conversation with you about it.

**Mr Bednarski:** My name is Felix Bednarski. I will be speaking also on behalf of my wife, Amalia Galle. We are the owners-operators and employees of two day care centres, which are family centres. One is called Humberside Montessori Day Care and another is called Village Nursery.

I would like to draw a picture of our lives and its relation to day care issues. I arrived in Canada 15 years ago. I did not bring any monetary possessions, but what I brought with me were dreams, ambitions, a university degree and a great desire to work hard to accomplish something. Here I met my wife, raised two children and became a Canadian citizen. It was very hard in the new land to establish myself professionally. It took 10 years of hard life for me and my wife to come to a conclusion on our career.

We had a dream. That dream was that we wanted to run our own day care. My wife decided to give up her career of working for 21 years as a registered nurse, which presently would give her a salary exceeding \$50,000 a year, and I gave up my master's degree in architecture and four years of studies at an academy of fine arts.

Day care was our choice for two reasons: We wanted to make it our own career and we were fed up with non-profit day care services our own children were going through.

This is the way Humberside Montessori Day Care came to life five years ago, operating on a single floor in a house at 310 Clendenan Avenue. We started with two staff members and 12 children only, ages two and a half to five years old. Due to the growing demands for our program, we expanded our services into all three floors. Our original half-day Montessori programs have been expanded to a

full day. Children who grew are still coming back to us to participate in a very popular before- and after-school-age program.

In May 1990, due to the continuous demands for spaces in our agency, we expanded to a second location at 2525 Bloor Street West called Village Nursery, where we provide care for children from three-month-old infants to 10-year-old, school-age children.

In a short five years we were able to create employment for 25 young women with whom we are presently providing day care services and Montessori education to 150 children. All our children are full-fee-paying children. We do not have any subsidy agreement with Metropolitan Toronto. We feel that in the five years we accomplished a lot. We feel we contributed a lot to our country and to the province. We feel we contributed a lot to our community. But the last few months disturbed our lives enormously.

The present Ontario government initiated changes to the child care infrastructure in Ontario. The message we are getting is very simple. We hear that this province does not need immigrants who come here with dreams, ambitions and desire for hard work. We hear we are not good enough, that our 300 parents leaving their precious children with us are not good samples of the quality programs we offer. We hear that private achievements and contribution to the community are not good enough, and we feel that we save the province hundreds of thousands of dollars every year. We hear it is better to rob a taxpayer of his or her money, use the government handouts, abuse public funds by defaulting public non-profit day cares into debt.

We became very angry that the present Ontario government allows and supports financially such organizations as the Ontario Coalition for Better Child Care, which is tarnishing our names and, in fact, lies to the public about the care we are providing.

We heard a lot about quality. I would like to tell you about our quality. The quality in our sense is the single mother who qualifies for a subsidy but has her son in our centre because she wants to have a clear mind that her son is safe and well looked after. The same mother has a choice of five other non-profit centres in the area.

The quality in our understanding is a little child from our day care who stays for supper with us because his mother was delayed by a snowstorm. The quality in our understanding is one-of-a-kind playground built without nails, so that children would not hurt their hands.

The quality is the Montessori education we are providing to young children without additional cost to the parents, where the costs of Montessori equipment is at least five times more than toys. It is very hard to find Montessori teachers working in a day care setting.

The quality for us is that we increased this year our enrolment for an additional 24 children and we hired three extra staff members despite gloomy economy, recession and without a penny from the government.

The quality for us are the parents who buy a house near our day care because it would be close for their children to walk to the centre. The quality is our own subsidy plan for parents who cannot afford our programs but who would like to enrol their child in our centre.



Quality is a father who is unemployed and who pays only a fraction of the fee and his child can stay in the Montessori program.

Quality is our free home school bus delivery program for parents who lost jobs or who do not have cars.

Quality is our supervisor who can take a higher-paying job in non-profit day care but builds her life and career with us because the structure of our organization better responds to the needs of the children.

Quality is the parents whose voice and input in our operation are more than gold for us and the parents who have a complete trust in our work. We do not need monthly board meetings; we talk to our parents on a daily basis. Any concerns are being dealt with immediately.

We heard a lot of tarnishing and insulting statements about the financial side of private day care, statements which in our opinion are simply a lie. Here is what we have to live with:

How would you measure our commitment when we borrow about \$250,000 to finance playground-building and equipment purchase? We are responsible for it. That was not a handout from the government.

How would you measure our dedication to the cause of children if for the first time since 1987 myself and my wife were able to claim last year a salary of \$11,500 a year each? This is with my working schedule of 12 hours a day, seven days a week, and my wife the same, with the exception of Sunday. We are hoping to receive this year a salary of \$22,500 each. This is after five years of being in operation. I must tell you that we love what we are doing and we are very proud of our work.

How would you measure our commitment to high salaries for staff if our off-the-program supervisor makes \$30,000 a year, just slightly below an average in non-profit day care, considering that we are receiving only half of the direct operating grants and we have to pay a high \$5,000-a-month rent?

This is an investment in our future. This is our investment in community infrastructure. We feel that we should be cherished for it or we should be rewarded. But what do we get in exchange? We are being persecuted by our own government.

We feel we have a great knowledge and expertise in providing a high quality child care. However, our knowledge and expertise has not been acknowledged by the present Ontario government. I must rather say it was rejected. We are not allowed to contribute to the process of preparing child care reform. Only self-serving interest groups were allowed to speak.

We feel the present Ontario government is going against its own people. I know this feeling very well. I spent 28 years of my life living under an oppressive regime in Eastern Europe. Our lives are being shattered as our own government is planning to take our livelihood away from us, and by doing this it will destroy our achievement in and contribution to the province so far.

I would like to use this occasion to present our recommendations relating to the government's policies relating to independent child care centres.

We feel that private, independent child care centres have to be an integral part of any new child care policies in Ontario. In our view, private day care is superior to non-profit. It provides better access for parents to the leadership, runs better, operates more economically, serves the community in a better, modern and flexible way and, most important, saves taxpayers millions and millions of dollars.

Government policies should concentrate on monitoring abuse of public funds, such as financial abuse in Dovercourt International Day Care: \$500,000 go down the drain. Forty per cent of non-profit day cares in Metro are in financial debt. In one of our neighbourhood non-profit day cares over \$20,000 went missing. Subsequently the supervisor and treasurer of the board have been fired. The whole board has been fired. Do we ever hear about stories like this in public?

There has to be a public review of the operations of non-profit day cares. In our view, the present structure will always be a source of financial abuse. It is like in a private organization, there has to be a person in charge, but not an antique, unimaginative board which is often self-serving and is also removed from the daily life of a centre. A ship without a captain will always sink.

We would like to see also that parents have a right to select a day care of their choice. Parents receiving a day care subsidy should have a right to select a centre of their own choice. This will create competition, which in turn will create excellence in all existing child care centres.

In our view, a public and universal day care system will never work and, if implemented, will balloon out of proportion like our present medical care. In our view, the present child care reform should be rewritten. As it stands now, it was only written to fulfil the political ambition of the governing party in Ontario, one of whose prime objects is the elimination of private, independent child care in Ontario. Thank you.

1630

**Mr Mammoliti:** Thank you very much. An excellent presentation. You mentioned earlier that you feel the private child care centres are superior.

**Mr Bednarski:** That is right.

**Mr Mammoliti:** You also mentioned competitiveness. I am sympathetic, let me tell you, to private as well, I must say, but I have had the opportunity to visit a few in my riding and I think we could agree that being competitive—it is like a business, perhaps like the corner store or even the gas station on the corner. Would you agree that you have got to treat it like a business?

**Mr Bednarski:** Not necessarily. I understand the business. The business side in day care is simply the management of the money. Competitiveness is something else. I am talking about competitiveness in quality.

**Mr Mammoliti:** So you are saying that it is not competitive at all, that you do not have to make decisions based on the private child care centre down the street. Do you keep tabs on the private child care centres in your community? Do you ask and see how much they charge? Do you see the types of food they feed their children and



that sort of thing? I would think you would do that as somebody who is—

**Mr Bednarski:** No. We have our own set of goals and we set those goals. If you are talking about fees, for example, those goals are very often influenced by what the parents can pay. If you are talking about quality, we simply have our own set of goals.

**Mr Mammoliti:** When a parent comes to you, as the owner, and says, "I have my child and I would like to see your facility; however, I can get it cheaper at the private centre two blocks away," what do you say to that parent? In terms of quality, you know the type of quality. That is one thing you can say. Do you not agree that it is a competitive business? Do you not agree that at times you have to make decisions to keep yourself afloat if your competitor down the street is charging less?

**Mr Bednarski:** Sir, my answer to this would be that in the last five years we have not spent a penny on advertising. Our quality speaks for itself.

**Mr Mammoliti:** That is not what I am asking. I am not asking about your advertising. I am asking whether you have to make those very crucial decisions.

**Mr Bednarski:** That is our own set of standards and qualities we are setting. It does not depend on whether there is a non-profit day care next door that is charging less and therefore we have to reduce the fees. If the parent is coming to us and telling us that the next-door day care is cheaper, we are sending this parent to that day care, because the parent really does not look at the program, he looks at the fees.

**Mr Mammoliti:** So it is competitive then?

**The Chair:** Thank you, Mr Mammoliti. Mrs O'Neill.

**Mrs Y. O'Neill:** Mr Bednarski, I thank you very much for giving us a story of your contributions. I like the term. I think it is a term we do not use often enough, that you take pride in your work. I think that is a very important goal for all of us.

You have suggested two things I want to ask you about. One is that you do subsidize your own parents even though there is no subsidy from the government. I wonder if you would speak to that briefly. Then I want to be more specific, and as specific as you can be, about why you are so full of fears when we were told this morning by the minister and indeed this afternoon by members of the present government caucus that your kind of operation would be in no jeopardy, because there would be a business plan you would submit and people would still have the choice and there would be no enforcement to conversion as long as you were not receiving government subsidies. I am wondering why you feel so fearful and how you subsidize people within your operation.

**Mr Bednarski:** If I may answer the second question first, I think there is a mechanism, and maybe we are not talking about this mechanism. For as long as the government will be setting out the standard for the qualification for our staff and supplying the staff in the non-profit sector with the additional money, this is the area where we are going to lose, because in the future I will not be able to

hire qualified staff, which is required by the Day Nurseries Act, because all the staff will go to the much higher-paid jobs in the non-profit sector. So that is the reason. Nobody touched that subject, in my view. Right now there is a difference of \$5,000, and that difference probably will be growing. That is the fear and that is the problem I see in the future.

**Mrs Y. O'Neill:** But you will continue to have access to the direct operating grants at 50%, as we understand it from this morning. Do you understand that?

**Mr Bednarski:** I understand this, but we—

**Mrs Y. O'Neill:** Because you were in the business in 1987.

**Mr Bednarski:** That is right, and we got operating grants for 24 children in one centre and in this centre right now we have 64 children, so there is a difference of 40 children and there was no increase in grants. Therefore the allocation per staff is much smaller right now. We could expand for another 100 children, because we have a lot of parents who wanted to come to our centre, and the allocation of the direct operating grants will be very small.

**Mrs Y. O'Neill:** So the number on the direct—

**The Chair:** Thank you, Mrs O'Neill.

**Mrs Y. O'Neill:** Okay. Thank you. Sorry.

**Mrs Cunningham:** I am sorry I missed your presentation, Mr Bednarski, but I am sure that the members here are interested in the Montessori schools. I would ask you in a general way, since you are quite an association, I understand, are there many children who are subsidized or partially subsidized in your school now?

**Mr Bednarski:** As I said earlier, we do not have a subsidy agreement with Metro. All our children are full-fee-paying children. I did mention that we have our own subsidy plan for parents who cannot afford our programs but would like to enrol their children into our centre. It is a very informal plan and so far, in the last five years, was working very well. The parents have been coming to us. They are interested in the program. They get a package of booklets about our programs, fee etc, and if they find out they cannot afford the program for one reason or other—the single mother, maybe one parent laid off—they come to us and say, "Listen. This is what we can afford. I would like to enrol my child, but can I have school bus delivery," or something like that.

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**Mrs Cunningham:** So the only subsidy you get now would be in the form of the direct operating grant?

**Mr Bednarski:** Exactly. That is right.

**Mrs Cunningham:** I see. Could I ask another question? Are you subject to the day nurseries regulations?

**Mr Bednarski:** Yes, we are.

**Mrs Cunningham:** Regular inspections?

**Mr Bednarski:** That is right. That is another problem we have, as I said earlier to another gentleman here, that we set very, very high standards. We wanted to give parents more than any other average day care, and that is why we decided on the Montessori program, which is very costly,



and it is very hard to run because in many instances there has to be special approval from the ministry in order to fulfil the regulations for running the proper Montessori program.

**Mrs Cunningham:** Are you aware of the public consultation document that is going around? I am sorry, it is a grey one. This one—no, I have not got it. Have you seen that?

**Mr Bednarski:** I did; the child care one. That is right.

**Mrs Cunningham:** The consultation paper. Are you planning on making a submission?

**Mr Bednarski:** That is right. I did sign myself as a representative in Metropolitan Toronto west to speak up on behalf of our two centres, and also in the Toronto centre to speak up on behalf of United Voices.

**The Chair:** Thank you. We appreciate your taking the time to come and speak to the committee this afternoon.

#### CEDAR GROVE CHILDREN'S CENTRE

**The Chair:** The next presentation will be from Cedar Grove day care centre and school, Sue Kendall, director. Good afternoon.

**Mrs Kendall:** Good afternoon.

**The Chair:** Welcome to the committee. The committee has allocated 20 minutes for your presentation. As always, we appreciate some of that time for questions and answers.

**Mrs Kendall:** Thank you. I have asked that three letters be passed around. I kept it to three because you do not need to be reading a lot of documentation. My name is Susan Kendall, and I own and I operate Cedar Grove Children's Centre in Lorne Park, Mississauga. I became interested in quality day care when my own daughter was two years old and had been abused by her babysitter. I took a whole week off work as an executive secretary to find the best care for her I could. In 1974 she was old enough for kindergarten. I faced the inevitable half-day problem and became one of a pilot program of private home day care providers along with four others for what is now the region of Peel's rather large program. I continued to offer home day care until 1981.

I graduated from Sheridan College's early childhood education program through its continuing education department in 1984 while working at a full-time job, running my husband's company and having three little girls.

I would like to take a few minutes to give you the history of my centre. Cedar Grove was first opened as a nursery school in 1969 by Mrs Johanna Zuuring. The licensed capacity was for 84 children, and the program ran from 9:00 to 11:30 each morning. Mrs Zuuring has always run at full capacity. In 1984, we were introduced by a mutual friend and within 30 minutes of conversation she asked if I would consider buying her school as she wished to retire. She had been looking for someone with the same philosophy and enthusiasm she had.

I bought the school. I had to take out a loan to purchase the school and carried on working for the Children's Aid Society of the Region of Peel to repay the loan while the supervisor ran the school. I have to admit that the equip-

ment was in a pretty poor state and the program adviser at that time commented, after I took over, that she was really impressed with the renovations of the equipment and improvement in the program.

In 1985, at the request of parents, we added an afternoon program. When I took over the direct running of the school in September 1986, we had four children bringing in packed lunches so they could attend both the morning and the afternoon program. We also had a waiting list for other children to stay for lunch, but we were not licensed to do so.

Once again at the request of parents, we applied in the spring of 1987 to change some of nursery school space to day care space, and we were granted our licence in September 1987. By this time our children were going to kindergarten and some had graduated to grade 1, so with requests and encouragement from our community we added kindergarten and the after-school program.

At the moment we have a capacity for 84 half-day preschool children, 22 day care children, and 15 before-and after-school children. We actually forfeit 24 spaces for an indoor playroom, but it is really worthwhile to have, especially when it is wet or cold or very hot.

We have children whose parents came to us as children, and my eldest daughter is at university with students who attended Cedar Grove as preschoolers. We have children who have been with us since they were two and a half years old and have finally graduated from our after-school program, as we feel they are now responsible enough to stay at home by themselves. But they still use Cedar Grove as a safe haven, if necessary, and we are available to them by phone, should they need advice when their parents are inaccessible.

Up until last year we did no advertising at all, as every parent came to us by word of mouth. Most of the parents still do. The majority of our families live locally, but we have always had parents who have chosen to come to us because of our quality, our enthusiasm and the atmosphere of the school. They have been prepared to drive to us from as far away as Milton, Burlington and Toronto.

The building we are in is a typical church building, and we share the facilities with many other organizations and church programs. It is a very active church, and when I first took over the school, the church was not convinced that Cedar Grove was really a true outreach into the community. Today they are not only convinced but are very concerned about our ability to continue to operate under the new directives of the Ministry of Community and Social Services. The church is happy it does not have to provide volunteers for another program within the building, but we do have church members who sit on our advisory board.

Decisions about new equipment or new programs introduced into the school are always discussed with the church first, and consideration is always given to our mutual benefit. They have supplied me with a letter for your perusal.

As I said, we are in a church building that was not specifically designed for day care or nursery school. However, through creative thinking and innovative planning, we have achieved the best possible program in a rather difficult situation. We have been accredited for some of



our solutions by our local branch of the ministry, which constantly recommends to other day care centres facing difficult circumstances, whether it be room size, room shape, room situation, playground problems, that they go and see how Cedar Grove tackled and resolved those particular problems.

I have been asked by the ministry to attend discussion and input groups when new programs were being designed. There have been instances when ministry staff have observed my staff completing certain in-house documents and have gone back to the ministry and, in time, these procedures have even become part of the guidelines.

I have been asked on several occasions to assist floundering non-profit organizations to reorganize and help them set up a workable and realistic budget. We have always maintained a clear licence, and the comments on the program advisory reports have always been very complimentary; quite often, "Excellent programming."

I have to tell you when the ministry began making its announcements that only staff in the taxpayer-supported organizations—non-profit, as you call them—were being given additional funding and that the policy of the future was to eliminate private centres which had been running for years without any outside support, I was hurt, and finally I realized that I felt betrayed that the ministry which I thought had supported and appeared to respect my contributions was now plotting my demise.

We are used to having students from high school co-op programs, and from Sheridan College ECE and ECA program as well. During the first semester of each year we have first-year ECE students, and we help them develop their skills in the field. If we have a first-year ECE student during the second semester, we know she is repeating her first placement and she is being sent to us to bring her up to standard or discover where the problem lies. Obviously Sheridan College values the quality in our program and the support for the students.

During my studies at Sheridan, it was impressed on me that if you wished to be accepted as a professional, you should present and dress as a professional. My staff support this philosophy and are accepted by our parents as exactly that. The rapport between staff and parents is very open, warm and supportive of each other and provides continuous feedback to enable the parents to go to work with the satisfaction of leaving their child with staff who care and so perform their own duties without any anxiety around their child.

My staff are equally as qualified if not better than any of the local non-profit centres. I still have staff who joined Cedar Grove with Mrs Zuuring in 1970. Most of my staff have been with me for more than two years. I even had to re-retire one of my staff last June because she enjoyed being with us so much. My staff are qualified, dedicated, enthusiastic, loyal and, above all, caring people who feel discriminated against.

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What is it about my centre that the families like? When a family comes to our centre, they are made to feel they are always welcome. We have a total open-door policy. They are advised that I consider my staff to be trusted

professionals who work as a team for the benefit of all. An example of this is, if a staff member is sick, my staff work out between them how to cover each other. It is immediately apparent to anyone visiting that everyone is happy, busy and well taken care of. If a problem arises or parents have a brilliant idea, they know they can bring it directly to me. I have the authority and the interest in alleviating or resolving the problem or bringing the idea to fruition without ever having to wait or have it referred to a board meeting.

Should a parent call during the day to check on the progress of her child, I can reassure and advise her of how her child is, because I spend a good part of my day in the classrooms interacting with the children. Parents know that I am often at the school until late at night, as I spend the day with the children. This means I have to complete the paperwork after school hours. We also make ourselves available to new parents to inspect the facility after hours so we can meet both parents.

I have parents and children who have been attending the centre for several years, who greet my staff and myself in the neighbourhood as close friends and who still come to our Christmas or summer concerts. This year in June our summer concert will be the first concert that one of my parents will not be there since 1970. She has either had one of her own children in the centre, continued to visit or brought her grandchildren. Sadly, she died in December.

I have several families whose only constant was the school while they were torn apart by prolonged, brutal and angry separation and divorce and who are still involved with us today as their lives begin to settle. As many parents will tell us, "If I can trust you with my children, then I feel I can trust you to help me with my problems." Many a late night has been spent listening to distressed parents, helping them through a crisis, whether or not it is related to the children. I would like to add that I have never turned a child away for lack of funding. If we cannot do something ourselves, we will look within the community to help control that.

When a parent expresses a need for service, Cedar Grove looks for a way to either provide it or advise the parent where and how they can access it. We are a resource centre too. We hold parent-teacher workshops on many different subjects whenever we feel parents need information that will help them as families to greater understanding and insight into child development. These include appropriate methods of discipline, that is, to promote consistency between home and the school; how to develop your children's potential without pushing them—we are afraid of the hurried child syndrome; awareness of media violence. We have an annual family picnic at the lake and the children thank our moms on Mother's Day by serving them with a formal tea. We bring out the bone china cups, the saucers, lace tablecloths, the works, and the children serve the moms.

I would also like to mention that I am not the only person from my family who is involved in the centre. My husband is our cook, dishwasher, handyman, artistic director, set-maker, computer resource person, carpenter, electrician, plumber and first aid specialist. We are a



mom-and-pop organization. He is a trained baker and pastry cook, but he prefers our hours. His concern for the children's nutrition is primary and the fact that we have vegetarians, Hindus, Muslims and strict Roman Catholics does not deter him from providing each child with a delicious, nutritious, fresh and visually inviting meal at the same table. He has been asked by the ministry and the public health department to run workshops on how to run a sanitary, methodical kitchen that produces attractive, nutritious and, above all, cost-efficient meals.

Our three daughters are always ready to pitch in and help out with whatever needs to be done, be it laundry, help in the kitchen, repair or paint equipment, play with the children or help set up an art activity. Two of them were born into a home that was operated as a mini-day care and they were brought up in it until we were able to buy Cedar Grove. They have been involved all their lives.

My personal plan for the future was to maintain a high-quality centre that provided for the needs of our community until I reached retirement. I would then pass my centre on to a party who was as qualified, highly motivated, equally enthusiastic and mutually philosophically agreeable to me. This can no longer happen.

Cedar Grove is not only a family-oriented, family-operated centre; it is also our whole life and our sole means of financial support.

Several new families have come to us recently and have expressed a concern about the lack of structure and programming at some of our local competitive non-profit centres. Our program is aimed to stimulate each child at his developmental level and to encourage him to continue learning. We allow our children to have input into our programming, and it may often change the direction we had planned, but we have discovered their interest level, enthusiasm and depth of participation have increased dramatically, and subsequently the level of satisfaction for them is significant.

I hope I have convinced you that Cedar Grove is community oriented and community responsive and will continue to respond to the needs of the community while we can.

Why did I want to own and operate a day care centre? I wanted to own and operate my own centre because I had had placements and worked in several other centres throughout my training whose funding came from various auspices. I often felt that quality, enthusiasm and commitment were lacking. The reasons those things were not quite right as far as I could see was because the supervisor did not have absolute authority or insight or adequate training to understand what it was that was not quite right. I felt parents wanted to know that the person who owned the centre had sufficient interest in it to be there on a daily basis and be readily available if necessary.

I could fully endorse a ministry that rewards and acknowledges people and organizations that provide quality care, which until recently seemed to be the case. If the ministry's proposals provided equal and additional salaries for my staff, who are as well-qualified, hardworking and deserving individuals as those in the taxpayer-supported centres, I would be the first to sanction it. If the ministry's

proposals provided funding for additional subsidized care, I would applaud. If I could be assured families would receive cheaper day care through these proposals, I would be ecstatic.

However, in the recent survey of my area, it appears none of these will occur. I will be offering the cheapest day care, my staff will be paid the same rate as the staff of the region of Peel and no additional spaces for subsidized care will be created in our area.

If the ministry's proposals guaranteed that guidelines would be strictly and equitably enforced, I would insist on them being implemented. If the ministry's proposals could guarantee staff would be more motivated and enthusiastic and more deeply involved and committed to their centres and the children, I would be enthusiastic too.

Sweden and Britain have both opted out of universal day care after years of experience because of too high a cost and lack of motivation of their staff, and now support both government-run and private centres as parents' right of choice.

Since the proposal New Directions was introduced in 1987, I have contacted the local branch of the ministry on several occasions and asked what the procedure for conversion would be. Their answer has always been that there is no money available and there is no documentation to provide me with. I have never asked for compensation, but that was their only answer. When finally confronting them with a specific proposal, it was made quite clear to me that even if I should want to convert, they would not allow it. So why this public charade about conversion kits and encouraging private operators to convert?

When we immigrated to Ontario, it was Canada's jewel in the crown, where free enterprise and entrepreneurial concepts were held in high regard. Efforts were appreciated and applauded. The recent policies being pursued jointly by the Ministry of Community and Social Services and the Ministry of Education degrade and denigrate people's accomplishments, especially women's. These women's goal was to ensure that the next generation would have a wholesome beginning so they could become responsible adults whose enthusiasm and values would contribute towards a better world in the future. These women had the foresight, fortitude of character and motivation to provide care for children when the government felt disinclined to do so. It is unconscionable to know that now these ministries see a definite need to provide care. They are destroying what exists and replacing it with a system that so far has proven itself to be totally unaccountable financially to anyone and a burden on the already poor taxpayer.

The service we offer our families is of high quality and based on providing the children who come into our care with the very best we have to offer. If this were not our philosophy then we would not have survived this long. We are held accountable by any parent who is dissatisfied. They have the option to remove their child, and we would lose a client.

We are not a burden on the taxpaying public, whether they have children or not. One of my parents stated, "This community would never be the same and would lose a



tremendous asset if we were to lose Cedar Grove." Thank you.

1700

**The Chair:** Thank you for a very good presentation. Unfortunately we only have about a minute and a half left, so it is a quick question from each caucus. Mr White, for 30 seconds.

**Mr White:** You made a distinction between centres like your own—and I am very impressed with your obvious caring and competence and your long history as well with that centre—and those that are the non-profit centres, which you referred to as taxpayer-supported. You do not receive any provincial moneys, then, I presume.

**Mrs Kendall:** I receive half the DOG grant.

**Mr White:** Half the DOG grant.

**Mrs Y. O'Neill:** Mrs Kendall, you just made a statement that you were told that even if you want to convert you could not. Were there any reasons given to you?

**Mrs Kendall:** Because there are other centres available, non-profit organizations, in the local community which would take our spaces.

**Mrs Y. O'Neill:** You were given that information by the regional office?

**Mrs Kendall:** Yes.

**Mrs Marland:** I would like to commend Mrs Kendall. I am very familiar with her operation. I am also very familiar with other centres in the same area and I can tell you that everything she has said to this committee this afternoon is absolutely correct.

One of the concerns of the minister this morning was that there is not enough input by parents without the formal board route that the non-profit centres have. Could you tell this committee how your parents have had input into your operation all of these years, other than you mentioned if they are not happy they can remove their child? In a general way, can parents have input into your operation?

**Mrs Kendall:** I am at the front door most days of the week when they come in to greet them and also when they leave.

**Ms Poole:** Do you also have an advisory board?

**Mrs Kendall:** Yes, we do have an advisory board.

**Mrs Marland:** So you are a private centre with an advisory board.

**Mrs Kendall:** Yes.

**The Chair:** Thank you, Mrs Kendall. We appreciate your coming this afternoon.

CHILDCARE RESOURCE AND RESEARCH UNIT,  
UNIVERSITY OF TORONTO

**The Chair:** The next presentation will be made by the Childcare Resource and Research Unit, University of Toronto, Martha Friendly. Ms Friendly, you have been allocated 10 minutes by the committee.

**Ms Friendly:** Yes. I want to use my 10 minutes thoroughly, so I will speak fast.

First of all, for clarification, I have worked at the University of Toronto for more than 10 years. The Childcare

Resource and Research Unit has been funded by successive governments beginning with the Conservative government as a resource on child care research and policy, and some of you have used it over the years. People from all parties are welcome to use its resources. People from many governments in Canada use it as well as the community.

When I was preparing this presentation I pulled out my file on the last committee on profit and non-profit child care and I actually noticed that my presentation to that committee was March 24, which is today, 1987. So this is five years later.

I am going to focus my remarks on the report of that committee. I am sorry that Cam Jackson has left because he was the only common member. I would like to draw your attention to some aspects of the report that were put forward five years ago, and I see a lot of other people in the room who were here five years ago. So that is what I am going to do.

Now, Dianne, I just want to tell you that I am not going to talk about what I talked about five years ago. I brought my transcript from last time if you would like to have a copy of it. I have brought a couple of copies which you can have afterwards. Last time I reviewed the research on quality and I am not going to do that again because a couple of people are going to do that very well tomorrow. So if you have any questions about that, I can probably answer them.

Since I only have 10 minutes, I think what I would like to do is put this whole issue within a public policy context. I think, in listening to the presentations today, it is a very similar kind of discussion to what we have been having for the last 10 years. I think you alluded to that. It has to do with how you view child care, and I would like to talk a little bit about who is saying what and how the issue kind of falls out.

What I want to say to you is that over the last 10 years we have started seeing child care as a public policy issue. Over that period of time a really comprehensive range of groups have advocated for improvements to child care and have placed the issue of how you deal with the question of child care as a business, commercial child care, within that context. What we have seen in Ontario, and I think this is perhaps more true than in any other part of Canada, is that over the last 10 years successive governments have moved more and more to have a role in child care. They have moved to regulate more, and I think we have heard that a little bit today. They have moved to fund more. They have moved more to involve themselves in how child care is contextualized for children.

In Ontario to date we have really moved from government having a passive role in child care to where I think it moved under New Directions for Child Care under the previous Liberal government to playing a facilitative role. I think that was the conceptual shift that New Directions made. It took a number of positions that facilitated how and where and in what ways child care would be provided.

I think the real question people are debating is, what is government's role in initiating and funding and regulating child care and determining what it actually looks like? No



government in Canada, really, and not in Ontario, has yet taken a proactive stance on child care. You can look at the role that governments in the European Community countries have played in child care. Even those governments have moved more and more to taking a proactive stance, and that means it is saying, "Look, we are going to have child care, just like we have sewers or just like we have schools." It does not necessarily mean, in our case, that the government will run those programs.

Right now, we are at a crossroads in Ontario. The current situation is that for the first time the government is looking at moving perhaps from a facilitative to what I hope will be a proactive role by establishing child care as a funded system and starting to see it as an essential public service. The term "essential public service" was used in New Directions, and there was kind of a transitional period, but I think we may be on the verge of seeing that kind of proactive role. It is within that context that we are making a shift from seeing child care as a service in the marketplace, which is what we have heard here from the owners of the commercial centres; that is, looking at it as a market service. On the other side, we have heard some discussion about how we see the whole child care system. How do we conceptualize that? What is it going to look like? Then you have to ask, what role does commercial child care play in an essential public service? How do you fit it into a funding structure?

I think this is a philosophical issue. Without being critical, I think we are looking at something that has happened historically, just the way it happened in Canada with education and the way it happened with health care services and the way it has happened in other countries, most of the western industrialized countries; not Britain, by the way. Most of the countries in the European Community, except Britain and Ireland, perceive child care as a basic and essential service. This is one of the difficulties in the amalgamation of the European Community: How do services fit in? I think that is what is going on here. The coalition presentation addressed better than I can in 10 minutes how that fits in.

I want to go back here to the committee report of five years ago because I find myself thinking, "What are we doing here?" This report, which did address the commercial, non-profit child care issue, raises the same questions about accountability and quality that were raised today and have been raised in many other discussions of this issue. I think if you look at who presented it—and it is very nicely laid out at the back who was on which side—it also illustrates the consensus on both sides. It shows who is saying what about it. So we have here commercial operators saying, "This is my business; this is my individual right. I don't want to lose that," and we have a wide range of groups saying: "This is a public policy issue. We need to sort of move on and see how we're going to see this."

I provided a little handout, because I knew I did not have much time, of some of the groups who have addressed this issue of non-profit and for-profit child care. It did not take that long. There are a whole bunch of groups which include unions, teachers' organizations, students' organizations, church organizations, women's organizations,

child care associations from across the country. I will pass those around for those of you who would like to see that. This is not just an issue of special interest groups who say that child care needs to be a basic public service and should not be for profit.

The other thing I want to say about this report, which I think is really interesting, is that some of the points being discussed here were made as recommendations in this report five years ago. In this report, the Conservative and Liberal members of the committee—the New Democratic Party members dissented and wrote a minority report which is also in here—recommended that the government adopt a conversion strategy, "The government should provide incentives to commercial child care operators who would like to convert to non-profit status." Is that not what is happening? So this is a Liberal and Conservative recommendation. I really want to remind you of that.

I think there are some other recommendations in here that are quite good. Dianne, you raised the question of statistics about closures and all those kinds of things. Well, another recommendation was that the government should create a central database containing the number of visits, inspections, violations of the Day Nurseries Act, follow-up procedures, a whole bunch of things. That also has not happened.

I think you should really acquaint yourselves with this report. It was a good start. We are talking about the same kinds of things, and there are many things to discuss here, but you have to keep in mind where we have come from, which is child care before the turn of the century with no government involvement.

We moved through a period in the early 1980s when the Conservatives were in power where they started providing some capital and startup funding to non-profit programs, which were even favoured then, trying to create some public policy around child care as the number of children increased and women in the labour force increased, through a period where we started seeing, under the Liberals, some government funding directly to child care outside the welfare system, outside of subsidies; a good start.

Now I hope we are looking at the creation of a real child care system in Ontario, and within that context we need to smooth the way for the people who have owned day care centres. I think that is what the conversion plan is doing. Any transition is difficult and what we need to do is move on and think about where we want to go, where we have come from and what discussion we have already had about this.

My 10 minutes are up. Thank you very much.

**The Chair:** Thank you for your presentation, and you are right on time.

**Mr Bisson:** Just very quickly, we had a presenter who was supposed to be here today, the Association for Early Childhood Education. I am just wondering if it would be okay with the opposition if we could get hold of them tomorrow morning and confirm them coming here at 1:40 and we can hear what they have to say. Is that okay? If we can confirm that tomorrow morning, fine, but if we cannot, we cannot.

**The Chair:** It is also a question of what is suitable to many members. They may have made other commitments. It may not need to be suitable to the opposition.

**Ms Poole:** Mr Chairman, Mr Bisson had already raised this possibility and I said that we had no objection to it as long as it suited members' convenience. The only difficulty is that this group has been difficult to schedule and I could not see the clerk spending a lot of time if she could not reach them easily. It might perhaps be beneficial, as long as we can make sure there is a Chair here and a certain quorum of members, to have them simply because then at least their viewpoints would be in Hansard and we

would have some opportunity to ask questions. I think we are certainly agreeable as long as it can be worked out.

**The Chair:** All right. Do any of the members have any concerns about this rescheduling if in fact it needs to be changed? No? I think that is fine. If the clerk can work that out.

**Mrs Cunningham:** Why do we not try the 5 pm slot which is open tomorrow?

**Mrs Y. O'Neill:** That would not be nearly as convenient for me.

**The Chair:** All right. We will adjourn on that note.

The committee adjourned at 1713.



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## STANDING COMMITTEE ON GENERAL GOVERNMENT

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Jackson, Cameron (Burlington South/-Sud PC) for Mrs Marland  
Mahoney, Steven W. (Mississauga West/-Ouest L) for Mr McClelland  
Perruzza, Anthony (Downsview ND) for Mr Mammoliti  
Ward, Brad (Brantford ND) for Mr Winninger  
White, Drummond (Durham Centre ND) for Mr Marchese

### Also taking part / Autres participants et participantes:

Sonia Ostrowska, program policy analyst, child care branch

**Clerk / Greffière:** Deller, Deborah

**Staff / Personnel:** Gardiner, Robert, assistant director, Legislative Research Service













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## Assemblée législative de l'Ontario

Deuxième session, 35<sup>e</sup> législature

# Official Report of Debates (Hansard)

Wednesday 25 March 1992

# Journal des débats (Hansard)

Le mercredi 25 mars 1992

## Standing committee on general government

Child Care

## Comité permanent des affaires gouvernementales

Garde d'enfants

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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON GENERAL GOVERNMENT

Wednesday 25 March 1992

The committee met at 1006 in committee room 2.

### CHILD CARE

Resuming consideration of the designated matter pursuant to standing order 123, relating to child care.

**The Chair:** The standing committee on general government will come to order. Before we start this morning, I would point out to members that there is a change in the schedule. At 1:40 this afternoon the group that the committee agreed to hear, the Association for Early Childhood Education, will be here. Members could make a note that at 1:40 we will have that other group.

### LITTLE RED SCHOOL HOUSE DAY CARE CENTER

**The Chair:** This morning our first presentation will come from the Little Red School House, Kathy Alexander, and I see you have a friend.

**Mrs Alexander:** Yes.

**The Chair:** Please introduce yourselves for the purposes of Hansard. The committee has provided 20 minutes for your presentation and the members always appreciate some time for questions and answers. You may begin.

**Mrs Alexander:** My name is Kathy Alexander. Along with my parents and husband, I operate the Little Red School House Day Care Center in Keswick. The centre has been in existence for approximately 16 years. We have been the operators for the last four and a half years. The centre is licensed for 98 children ranging in age from 18 months to 12 years. We also operate a school-age program in Keswick which currently has an operating capacity of 30 children, ages six to 12 years. We have access for bus-ing to all the public and separate schools in town for the school-age program.

We are located in a town of approximately 13,000 people and for 13 years the Little Red School House has been the only day care centre in Keswick. In fact, it was the only day care centre in the town of Georgina, whose current population is 29,000 people. In the fall of 1989, a non-profit centre was opened in Keswick. Many people thought the Little Red School House would have been hurt by this opening. In fact, it has helped us. Another non-profit centre was opened in September 1991, located right down the street from us. While both programs have been operating, Little Red School House and the people of Keswick have benefited.

One way the new centres have benefited is that the families of Keswick needing child care now have more choice. They have the freedom to choose which centre best suits their needs. They also have the freedom to change day care centres if they are not satisfied with their current arrangement. Another way we have benefited from the new programs is in regard to the parents' fees. Both programs are more expensive than ours.

An example of our current fees is \$100 per week for a preschool child compared to \$125 per week and \$136.20 per week at the other two centres. People comparing programs can look at this difference and will undoubtedly take it into consideration when choosing a program. The current supply of child care in Keswick allows the parents to have a choice. By converting the Little Red School House to non-profit, this choice will be eliminated. The point I am trying to make is that a child care system should include a mix of programs. I think 100% non-profit system is wrong.

Right now, healthy competition exists among the day care centres in Keswick. Parents also have a choice. If they are not pleased with the operation of one centre they are free to choose another type of operation, for example, either a board of directors or a private operator. As a parent quotes, "I prefer this type of setup where there is a single operator and I know that I can approach you about any concerns that I have and I am confident they will be resolved effectively."

However, this type of operation may not be what best suits every family's needs. There may be families who prefer to be more involved in the day-to-day operation of the centre and in the case of the non-profit centre they can be. In private centres, parents are always welcome to contribute their ideas to the program, though.

Quite a lot of private home day care exists in Keswick so at this particular time parents have a good variety of choice. The government's policies would strip parents of their choice. Does this government feel that parents do not have the capability to choose whichever program best suits their own needs? The NDP government is forcing its own ideology on to the residents of Ontario whether they like it or not.

The Little Red School House has a very good reputation. As proof of this, we are currently operating at just two children below capacity. I think those are pretty good numbers for a program licensed for 128 children in total. Also, we are accepting children on a waiting list for the program in September. We have not found the need to do a lot of advertising for enrolment as our current clientele are so pleased with the program they tell their friends and we receive quite a number of referrals this way. I am very comfortable with the quality of the Little Red School House. We are constantly striving to improve. However, at this point I feel the quality of the program is very high.

As I explained earlier, the centre is operated by myself and my mother. We employ a total of 19 staff members, all of whom are female. The child care system in Ontario is predominantly female oriented. The current government's policies will only serve to endanger the jobs these women now have. It would be very difficult for me to continue operating the Little Red School House if we were forced to



convert to non-profit. I would be placed in a very awkward position where, after four and a half years of operating the program according to my own philosophies, I would have to answer to a board of directors and turn to them for any decisions. The control of my own centre would be completely taken away from me. To tell you the truth, I am not sure if I could handle that.

I know for a fact that my mother would not continue working at the centre. She would opt for an early retirement. The only reason she re-entered the workforce four and a half years ago was because we were running our own business. We thought we could make a difference to day care in Keswick. We have made a positive difference, but now we face the government taking it away from us. I still do not really understand why.

Even though I can only speak on my own behalf, I feel this government's policies will have a devastating effect on the women day care centre operators in Ontario. Many who operate their own centre do so because they love what they are doing and they are damn good at it. Quality programs exist in the private sector and it is mainly due to these hardworking, devoted women. I wonder how many of these women will return to or continue in the workforce if they are forced by their own government to either close down or convert to non-profit.

Critics of the private sector say that child care should not be run as a profit-making enterprise. If they just take a look at child care in general, they will see that there is no profit to be made in the day care field. My profit is simply the salary I am paid for my work. If there is no profit, I do not receive a salary. If there is so much profit to be made, why did the Minister of Community and Social Services, Marion Boyd, announce on December 2, 1991, \$10 million to be paid to non-profit centres currently in debt?

I do not think the taxpayers of Ontario fully understand the impact on them with regard to the NDP government's child care policies. The elimination of the private sector will affect all levels of government, beginning with the local town councils and the regional governments. For example, in York region 90 private day care programs contribute \$3,000 on average in business and property taxes per year to the local governments. Non-profit programs and school-based programs do not pay any taxes to the government. Can you imagine the effect on local budgets when they lose this revenue?

The taxpayers of Ontario will be saddled with even more of a tax increase. There is already public outcry from increasing taxes. It would only get worse. This does not include the cost of the new system which has been estimated at costing up to approximately \$1,400 per household per year, each year for the rest of our lives and our children's lives. The government's new child care system will not be more affordable for the average taxpayer of Ontario. They will be paying for the system through their property taxes as well as a user's fee for the service. My local government will be losing approximately \$7,000 per year in business and property taxes. Can they really afford to lose this revenue?

The one thing I will miss the most is the personal contact and the friendships I have made with my employ-

ees, parents and, most important, the children. We all get so caught up in the policies, ideology, philosophies and implications that a reformed child care system will have on the current system that we lose the real reasons we are all here. Everyone in this room is concerned with the wellbeing of the children. We all want what is best for the children and their families. I firmly believe that to achieve the best possible solution for the children is to work together.

I think a child care system that combines a variety of programs would ideally serve the children and the families of Ontario that need to access child care. To achieve this, everyone who is involved in child care should be considered when the policies are being formed. The private sector of child care is being ignored. Our contribution to the child care system in Ontario has not been taken into consideration. It does not really matter what happens to the private centres just as long as they do not exist in five years.

Have the children in the families been taken into consideration when these decisions have been made? Does it matter to the government that the majority of people who currently use the private sector are satisfied with their arrangements? Does it matter to the government that parents do not want to remove their children from their chosen centre just because it happens to be privately run? Does it matter to the government that the children in these private centres are comfortable with their surroundings and would not understand if they were suddenly told they could not go back to that centre any more?

If some of these issues do matter to the government, now is the time to decide if it is willing to put children and families who access the private sector in Ontario through more turmoil than it may be possible for them to handle. Thank you.

**Mr Mahoney:** How much time do we have?

**The Chair:** I am just trying to figure that out.

**Mr Mahoney:** Sorry to put you under that pressure.

**The Chair:** About four minutes.

**Mr Mahoney:** Four minutes? Okay, I want to leave some time for Ms Poole.

Thank you very much, by the way, for your presentation. Could I just ask you to address the word "motive?" The government calls your centre and other centres in the private sector, which I call small businesses, for-profit day care centres, and they put great emphasis on the words "for-profit." The Ontario Coalition for Better Child Care yesterday said it is time that day care was taken out of the profit-motivated arena. The implication is these money-grubbing people who are just gouging parents and kids and making all this great money. So they want to take it out of the profit arena and put it into the socialist arena, into totally non-profit.

Could you describe for the committee what motivated you? Was it profits? Was it the opportunity to own your own business? Was it the kids? Was it service? Whatever it was, what motivated you to get into this business?

**Mrs Alexander:** The first motivation is that my background is in early childhood education and I thought I



could provide a quality service for the children. That was my motivation, for the children.

I knew, after talking to a member of the Ministry of Community and Social Services, that there was no profit to be made. She even advised me that a considerable amount of money needed to be invested into the day care to bring it up to high-quality standards, and we were still willing to go through with the purchase of the building, the land and the business. I think first and more important it is the children.

**Mr Mahoney:** That motivated you. You understand that they are saying your centre will still be there. It may even still be called the Little Red School House, but it will be converted, if it is lucky enough to be one of the 50%, and you will be paid some magical equity amount for your trouble, if there is anything worth paying you for.

**Mrs Alexander:** If there is anything there.

**Mr Mahoney:** Which I doubt, frankly. But it will still be there, so the kids will still go. You will still be there. You will be a civil servant.

**Mrs Alexander:** It cannot be guaranteed that we will be kept on.

**Mr Mahoney:** But assuming you are, assuming their ideology is that it is still going to be there and the kids will go there and you are going to be there working for the government, how do you feel about having your business stripped away from you for virtually nothing and your being turned into a state employee?

**Mrs Alexander:** In a word, I am angry. I am really angry and I am also frustrated. Why would they even want to do that? The centre is operating to high-quality standards now. This seems to be a waste of taxpayers' money.

1020

**Ms Poole:** One of the concerns we as opposition members have had with this government's policy is the impact on women. Most of the private day care operators are women and the majority of the staff are women. This ill-thought-out policy is going to penalize them severely. Can you tell us the impact on your 19 female staff members, first of all relating to the fact that they no longer will get the direct operating grants over and above what they already receive? If there are any new moneys coming, they will not go to your female staff members. Second, what would happen if you converted? Is there any guarantee they would retain their salaries, benefits and seniority?

**Mrs Alexander:** As far as I know, there is no guarantee they would retain their salaries and seniority. As far as the impact goes, I am not really sure. We have not heard of a conversion process or a package that will tell us how the centre will be operating if we convert to non-profit.

**Ms Poole:** But if you do not convert to non-profit—

**The Chair:** Thank you, Mrs Poole. Mr Jackson.

**Mr Jackson:** Following along on Ms Poole's questions, I personally do not believe that the government is going to proceed very actively with its conversion plan. After my discussion with the minister yesterday, after discussing the attitude of the coalition, it appears that unless all the stars configure in the constellations properly, under

very rare circumstances will the government consider conversion.

Rather, I am now harking back to a conversation I had with Janet Davis about nine months ago where she referred to the workers in the private centres as sort of on the same par as scab labour. Conceptually, if you consider that you have got non-profit centres operating in a larger community—maybe Keswick is too small, but in a larger centre—you would have three day care centres that are non-profit, have declining enrolment and have vacant spaces. So why would the government, which is predisposed to the unionized labour force out there that is receiving the full grant subsidies, go in and help prop up a for-profit centre and convert it? Because they are competing with the others. If there is anything we have heard it is that the non-profits are threatened by the competition that you offer.

I believe that this conversion stuff is a whole smokescreen and that your fellow workers and employees are in fact being treated like scab labour, that they will be punished as a result of this strategy. I find that offensive to women workers, because when they left their community colleges no one told them that they were going to be treated as second-class citizens by any future government. All three political parties agree that we should expand the grid. All three political parties agree that there is no problem expanding it in the non-profit. We disagree on how badly they want to punish the workers in your centre. Could you comment on that?

**Mrs Alexander:** I agree with you. When the workers came out of community college, all with the same degree, they had a choice of where they would like to work. The government is virtually taking that choice away from them. They are being punished for choosing to work in a private centre, through the difference in salary scales. They are even being told by their own government that working in a private centre means that they are providing lower-quality care. It really should not matter what the auspice of the centre is on quality of care.

**Mr Jackson:** I have maybe 30 seconds left. It is not the issue of the quality; I think quality is a big smokescreen here. If a labour government is predisposed to protect unionized positions versus non-unionized positions and the government, in its own warped sense of labour theories, literally looks upon those workers as not requiring protection because it wants to do away with that for-profit structure and faced with unionized labour job losses, which are jobs being lost—and they are today. I mean, we know the stats. Centres, regardless of their setup, are losing staff. Again, the coalition yesterday made very clear statements about why it would not participate.

Interjection.

**Mr Jackson:** Thank you, Mr Chairman. Just to finish the sentence, the coalition even suggested that it would not participate in a cooperative process of assisting in the conversion. They are backing right off. That, as I say—

**The Chair:** Mr Jackson, your time has expired.

**Mrs Alexander:** Is there time for my colleague Cindy Campbell to have a few words?



**The Chair:** We still have some time for questions. The government caucus is next. Mr White and then Mr Bisson.

**Mr White:** Thank you, Mr Chair. As you mention, Mr Bisson has a question as well, if there is time.

Mrs Alexander, you have mentioned a pretty good description of your area, the number of centres in your area and your long history with the Little Red School House. I am certainly very familiar with the area, having myself practised in Newmarket and worked in the past with many people from the Keswick area. You said you have had very good relations with the parents of the children who attend at the school house and that their positive feelings about the school house come back in terms of more and more referrals. You have 16 years experience, I think you said?

**Mrs Alexander:** The centre has been in that location for 16 years and I have been the owner for four and a half.

**Mr White:** You have good relations with your 19 staff?

**Mrs Alexander:** Yes.

**Mr White:** Personally, I have had experience as a therapist and a counsellor, both privately and with the public agencies. In the public agency, obviously, I was accountable to a board; privately, I am not. If the parents with whom you have such good relations were part of a board or other people from the community, say, a local pastor or whoever, were part of a board, why do you think that would cause difficulty for you? You are the person with the experience. The executive director of a centre is usually the person who informs the board what is happening at the school house, day care centre or whatever the nature of the centre is. Why do you think that would cause difficulties for you? You already have good relations with these people.

**Mrs Alexander:** That is true. I would not object to an advisory board of parents, but the problem with a board running the centre is that the control of making the decisions would be taken away from me. Right now I make the decisions. I would have to turn to a board of directors for those decisions, and part of that board of directors, a minimum I believe of seven people, has to represent the community. They might not know anything about child care. How can they make decisions about my centre if they do not know anything that happens within the day care?

**Mr White:** I do not disagree with you but my experience with social service boards—I have worked with quite a large number of them in York region as well as in Durham region—is that typically the policies are things which they finally rubber-stamp. It is the executive director who informs them, who makes the policy suggestions, who makes the determinations, who presents the budget that they typically confirm. It is not typically a situation where they, out of total ignorance of the work of the centre, are making ludicrous decisions.

**Mrs Alexander:** The other thing that disturbs me about a board of directors is that I have no guarantee that I would be hired on as executive director.

**Mr White:** You are obviously the most competent person for the job.

**Mrs Alexander:** That might be true right now. Cindy might be just as qualified as I am. That means the next time my contract comes due, I could be let go. I do not have that situation right now when I own the centre.

**Mr Bisson:** Just very quickly, it comes back down to the whole thing, the characterization that we got from a couple of members of the opposition about where we are going with this. The argument, the way we listen to the opposition, is that the government is opposed to the idea of making a profit. I do not think that is the argument here.

**Mrs Cunningham:** It is the only argument.

**Mr Bisson:** Hang on. The question is simply that seeing most commercial operations do not make a buck as it is, because the profit margin is very thin—I think you said that you managed to stay afloat and make a couple of bucks. How do you manage to do that? If everybody else in the commercial sector is having a hard time trying to pay their bills and make a profit, because profit is what you are in business for, how do you do it? What is your secret?

**Mrs Alexander:** I think my secret is that we are operating at capacity. There are a lot of day care centres in Ontario that are not. They cannot afford to keep it on. Also, I am lucky enough, I suppose, that my husband has a decent wage, a decent job. If there is no money for me to get a salary, then I do not take that salary. I think if I were on my own, I would not be able to.

**Mr Bisson:** Do you have a high staff turnover?

**Mrs Alexander:** No.

**The Chair:** Thank you for appearing today. I would like to remind members that the time is very limited for questioning and that if you wish to have responses to your questions, keeping your questions relatively short is helpful for the presenter.

The other thing I would like to remind the committee is that we do have headsets available. As always, the Legislature works in both official languages, so if people either on the committee or in the audience have need or would appreciate the translation services, they are available.

1030

#### ABC CHILD CARE CENTRES

**The Chair:** The next presenter will be ABC Child Care Centres, Ian Gibb. I see you have braved the perils of the Gardiner and managed to get here.

**Mr Gibb:** One of the joys of Toronto is spending 40 minutes on the Gardiner.

**The Chair:** You have 20 minutes allocated by the committee for your presentation. If you would like to reserve some of that time for the committee to have a chat with you about what you have said, that would be very good. Please introduce yourself for the purposes of our Hansard recording.

**Mr Gibb:** My name is Ian Gibb. I am the executive director of ABC Child Care Centres. Our organization is licensed to provide care for 507 children in six centres in



London and Sarnia. We employ approximately 120 people and contribute an annual payroll of approximately \$2 million to the economies of these two communities.

Most of you have clipping services, so you will be aware of what the press and the media are saying concerning the government's recent actions and policies. You will no doubt be aware of how important this issue is to the people of Ontario. Probably all of you will have been exposed to the positions of a well-organized, well-financed advocacy group which wants to eliminate the private sector from child care.

Over a couple of days of hearings, yesterday and today, you will have heard from Dr Doherty and about her literature review which clearly shows auspice to be an insignificant factor in quality. You will have heard about the ministry's own study, the Levy-Coughlin report, which indicates that the private sector is as accountable as, or perhaps even more so than, the public sector in the use of public moneys. You will probably have heard about the ministry's own recent statistics which indicate that the private sector has a better licence compliance rating than the other sectors operating in this field. Over these two days, you will also have heard from a number of concerned owners and operators and their staff about the impact these policies are having on their positions.

My job in the next few minutes is to try to share with you some perspective on what everyone else in the province is thinking and to add my voice to the vast majority of the people in this province who are urging you to rethink your policies, to move away from this "bankrupt ideology," to quote the mayor of London, and to begin to work together to solve the real issues facing our children.

To do this I would like to share with you some results of the Gallup poll work that the association has done and comments from administrators, colleagues and teachers from around the London area. Finally, I would like to share with you some perspectives about the impact the policies are having on me personally.

In November 1991 the Association of Day Care Operators of Ontario sponsored two questions on a Gallup omnibus study. One question was designed to gauge the opinions of the people of Ontario on who should provide child care. The vast majority, almost 70%, felt the current mix of service providers was the correct one. Only 19% of the public felt there should be only one type of service provider.

The preferences of the people of Ontario are clear, but maybe I should share with you what some people, the city administrators, other professionals and teachers, are saying in the London community at least.

The city of London is responsible for administering the fee assistance program which helps families in need access high-quality child care. They have reviewed the several position papers from the government and in their official position they have stated, "We are concerned that child care spaces may be lost, parents may have fewer alternatives and that commercial operators and their staff may be treated unfairly."

Additionally, they state:

"The conversion plan restricts the flexibility of the system and its ability to cope with changing demand.... The only guarantee that is associated with an exclusively non-profit approach to child care is that some responsible and viable small businesses will be forced to close their doors.... The city is distressed that instead of a philosophical mandate, the primary catalysts for systemic change should have been the four principles for reform...: quality, affordability, accessibility and sound management."

Other professionals in our community have also stood up to question the value of the recent policies. Childreach is a non-profit parent/child drop-in centre operating in London. It provides a much-needed service to the many families who choose not to use licensed care. It stands to benefit greatly if the proposed changes go through, but in its release of February 1992, Childreach's executive director states:

"A universal child care system will only serve to reduce parental effectiveness and fragment families.... Parents want flexibility to choose services and providers which meet their individualized needs.... Childreach feels strongly that recent provincial policy directions will further erode the family as the basic unit of society."

Perhaps the people most affected by the government's policies are the teachers who look after the children. So what do they think? In our organization we have a very open style and we frequently talk about the government's policies and the impact on the people. I solicit input from our teachers and from our managers on what the impact would be on them.

Kelly Caines is a supervisor in one of the ABC Child Care Centres. She is 30 years old and she is a single mother supporting and raising, on her own, two preschool children. I believe it is quite possible she could benefit from the full direct operating grant and the wage enhancement grants, and that would help to make her life and the lives of her children just a little bit easier. Yet in a letter she recently wrote to me—we were discussing the possibility of conversion to non-profit status—she said:

"There is a lot more at stake than just money. What about loyalty? What about sweat and years of dedication? What about pride? There are employees at our centres, like myself, who have been with ABC from the beginning. That's 10 years of hard work and dedication. We are like a family. We are happy with the way things are because each and every one of us has built up our centres to be what they are today.... How can I be proud of who I am when the government that represents me is taking away the source of that pride? My understanding of government is that they are elected to help and encourage the people they serve, not to take away their drive and enthusiasm."

You have asked for our personal perspectives as well. I believe I truly have the very best job in the world. Every day that I go to work, I am surrounded by caring, loving people whose only objective is to make a child's day a little bit happier and a little bit better. It is the only business that I know of where a satisfied customer, namely a happy child, will give you a hug just to say thanks.

I mortgaged my house, my future and, quite frankly, my daughter's future to build ABC Child Care into the



proud organization it is today. I now face personal bankruptcy and an uncertain career, not because I mismanaged the business but because someone who has never seen what we do, someone who has never spent time with me or my teachers, has decided that we are politically unacceptable.

Every second Friday I sign and deliver approximately 120 paycheques. As I do this, I know that for over half of these people that paycheque is the sole source of family income they have and that in today's economy, quite frankly, it is the only thing standing between them and welfare. I know that every decision I make affects the lives of over 120 families of the people with whom I work, and over 600 families of the people for whom we provide child care. It is a huge responsibility, but it is one that I took on and I accepted when I chose to do what I do.

1040

But the hardest part for me, relating to the government's announcement and policies, is that it has created situations that I am neither prepared nor trained to handle. So I ask you, what do I say to a woman in her mid-forties who is now supporting her out-of-work husband and her children? What do I say to her when she breaks down in tears in front of a group of children because she believes this government wants to close her centre and eliminate her job? Not, mind you, because she is doing a poor job, because she knows she and her colleagues are doing a very good one. What do I say to her? How do I explain your actions?

In conclusion, I just want to remind the government that the policies and directions on child care are far more than a political agenda item. These policies affect thousands of teachers and tens of thousands of families of children. The current policies were not developed, nor are they supported by the people of Ontario, the child care administrators, professionals or teachers working in this most important of fields.

Is it not time the government stopped listening to itself and started listening to the people?

**The Chair:** We have three minutes per caucus, with the Conservative caucus first.

**Mrs Cunningham:** Thank you very much, Ian. I am always proud to represent London, and now southwest Ontario, on this issue, because they have no one to talk to if they do not agree with the government position except for myself and the Liberal member for Windsor.

I am going to ask you two or three direct questions. Do you pay municipal taxes in your work?

**Mr Gibb:** In London last year we paid slightly in excess of \$100,000 in property and business taxes for the five London centres.

**Mrs Cunningham:** You mentioned you have a payroll of some \$2 million and some 507 children in your centres. You would be a typical example of big business in the eyes of this government. In fact, not you, but organizations like yours are quoted throughout the literature. I was looking at—

**Mr Perruzza:** That is not big business, it is small business.

**Mrs Cunningham:** In your view it is big business.

**Mr Perruzza:** It is small business.

**The Chair:** Order, please. Mrs Cunningham has the floor.

**Mrs Cunningham:** I was looking at a transcript from the hearings in 1987 where the government of the day was advised about big business and the big profit you make, so can I ask you a question? When the direct operating grants came in, my assumption is that you opened your books for the government of the day. Could you answer that question?

**Mr Gibb:** I believe that is what happened. To get back to your question, big business would imply a huge corporation.

**Mrs Cunningham:** My next question is, tell us about your big profit.

**Mr Gibb:** There is no big profit.

**Mrs Cunningham:** Look at these people when you say that, because you do not have to convince me.

**Mr Gibb:** My wife is a chartered accountant. She and I bought the business so that we could provide care for our daughters. My wife has had to leave working for ABC and go back into private practice in order to support us. I have not taken a paycheque or a penny out of ABC in the last nine months.

**Mrs Cunningham:** My final question is with regard to quality. Yesterday, when the minister was in here and we were asking her questions, really the only point she made that I was not sure about was the issue of the boards. Otherwise, she wants you to convert so that you will have a board of directors, "for the purpose of parental input," was her statement. Do you have any form of parental input in your child care centres now?

**Mr Gibb:** We have two forms of input. We do not have a formal parental board as yet. We have quarterly and semiannual meetings with our parents, and of course we are available for discussion with them at any time. We do have a formal group. It is a group representing the employees and we meet monthly with them to discuss issues around their jobs and overall direction of policy strategy for the organization.

**Mrs Cunningham:** Just an observation—

**The Chair:** A two-second observation.

**Mrs Cunningham:** Two seconds. This is the paper you will be asked to respond to on April 3 in London. The first question is, "What role should the provincial government play in the planning and management?"—

**The Chair:** Thank you, Mrs Cunningham.

**Mrs Cunningham:** The minister said she would be listening. I hope you are very loud on April 3, all of you.

**Mr Mammoliti:** Sounds like a recommendation.

**Mrs Cunningham:** George, you should take it under advisement. You might get re-elected.

Interjections.

**Mr Mammoliti:** Mr Chair, I hope you are going to add on some time here.

**Mr Jackson:** Because of your mouth.



**Mr Mammoliti:** Could I ask a few very quick questions. In your opinion, what is the ultimate, the most important thing in a child care centre?

**Mr Gibb:** The thing we focus on the most is what is best for the children.

**Mr Mammoliti:** I believe that sincerely. I think the children are the most important things, and any decision that is made should be based around the child.

**Mr Gibb:** I can explain further.

**Mr Mammoliti:** Do you agree with me on that?

**Mr Gibb:** I do.

**Mr Mammoliti:** Just forget about non-profit centres for a minute and let's talk a little bit about profit-making centres. Do you agree with me that it is very competitive out there and that you have to make some decisions that sometimes you are not happy with? Would you agree with that?

**Mr Gibb:** No.

**Mr Mammoliti:** You do not agree with that?

**Mr Gibb:** I do not feel that we are in a competitive environment per se.

**Mr Mammoliti:** You do not. Are you saying that you have never made a decision that you were unhappy with?

**Mr Mahoney:** How about you, George? Have you?

**Mr Gibb:** I have made plenty of decisions I am unhappy with.

**Mr Mammoliti:** Then frankly you are unhappy with those decisions because ultimately the children could be affected. Am I right?

**Mr Gibb:** They are decisions where we have had to sacrifice my own objectives, my own personal wellbeing, to support the children.

**Mr Mammoliti:** But ultimately you do care, and when you are upset at those decisions, ultimately the child could suffer.

**Mr Gibb:** No.

**Mr Mammoliti:** You are saying the child cannot suffer.

**Mr Gibb:** Those decisions do not affect the children.

**Mr Mammoliti:** No?

**Mr Gibb:** They do not.

**Mr Mammoliti:** Let's talk a little bit about food, for instance, in a child care centre. Let's talk about decisions that you make around the types of foods and the quality of foods and the amount of money you spend on those foods. That is the competitiveness I am talking about.

**Mr Gibb:** Okay.

**Mr Mammoliti:** Do you not think—

**Mr Gibb:** May I answer?

**Mrs Cunningham:** The point is they think you are robbing the children of good food to make a profit.

**The Chair:** Order.

**Mr Mammoliti:** Mr Chair, this is continually happening. I think it is—

**Mr Mahoney:** You are badgering the witness.

**Mrs Cunningham:** What kind of questions are these, George?

**Mr Gibb:** May I answer that question, Mr Chair?

**The Chair:** You certainly may.

**Mr Gibb:** In our organization, the administration is separate from the program. The lady who is actually responsible for the menu has 17 years of experience in child care. If you would like, I will bring in all seven of our managers and they will—

**Mr Mammoliti:** I am talking about competitiveness. If you want to answer the question—

**Interjection:** Let him answer.

**Mr Mammoliti:** —answer the question I asked.

**Mr Gibb:** They have never, ever—

**Mr Mammoliti:** The competitiveness of the food, I asked in particular. I am talking about the food.

**Mr Gibb:** I am talking about the food as well.

**Mr Mammoliti:** The fact that you have to pay a certain amount for a particular food is certainly going to take out of your budget, is it not?

**Mr Gibb:** It is an expense.

Interjections.

**Mr Mammoliti:** I would like to finish my point, Mr Chair.

**Mr Gibb:** So would I, Mr Chair.

**Mrs Cunningham:** Welcome to Queen's Park.

**Mr Mammoliti:** I am not being allowed to finish my point here.

**Mr Mahoney:** Neither is the witness.

**Mr Mammoliti:** The witness did not answer the question.

**Mr Gibb:** You have not given me a chance.

**Mr Mahoney:** This is stupid. He interrupted the witness trying to answer the question. It is rude, is what it is.

**Mr B. Ward:** Calm down, Steve. Don't get excited.

**The Chair:** Mr Mammoliti, you have about 30 seconds.

**Mr Mammoliti:** Are you finished?

**Mr Mahoney:** Are you? Moron.

**Mr Mammoliti:** Mr Chair, with all due respect, I hope that Mr Mahoney is—

Interjections.

**Mr Mammoliti:** Mr Chair, I heard the word "moron." I want it addressed in Hansard, please.

**Mr Mahoney:** If the shoe fits, leave it in Hansard.

1050

**Mr Mammoliti:** Yes, leave it in Hansard.

On a point of privilege, Mr Chair: I heard the word "moron." I hope you heard the same thing and I am asking him to withdraw it.

**Mr Perruzza:** It's unparliamentary, there's no question.

**Mr Mahoney:** Look it up.

**The Chair:** I did not hear it, but this may be a good time to tell the committee and the people in the room that this is an extension of the Legislature and all members should behave in a manner that reflects the Legislature. No

one can participate in any manner in these hearings, other than the presenter and the members of the Legislature here in this room, so I think we should try to keep the decorum on a slightly higher plane.

**Mr Mahoney:** Point of order.

**The Chair:** On a point of order, Mr Mahoney.

**Mr Perruzza:** Mr Chairman, on a point of order—

**Mr Mahoney:** Excuse me, do you want to hear mine first?

**The Chair:** Mr Mahoney has a point of order.

**Mr Perruzza:** He had a point of order.

**The Chair:** Mr Perruzza, you are out of order.

**Mr Perruzza:** He had a point of privilege. You proceeded to reprimand him and give us a little lecture. He jumps in with a point of order and you are going to go to him. Sure, he is a Liberal, just like you.

**The Chair:** That was uncalled for, Mr Perruzza. Mr Mahoney.

**Mr Perruzza:** Well, perhaps.

**Mr Mahoney:** Mr Chairman, in committee, while it is an extension of the Legislature—in the Legislature we do not have witnesses come before us in a body. In committee, the general rule is that the witnesses make their—

**The Chair:** This is not a point of order.

**Mr Mahoney:** This is a point of order. I think you will find that the witnesses make their presentations to the committee and the members ask questions and allow the witnesses to answer them, Mr Chair.

**Mr Mammoliti:** That does not give you the right to call anybody a moron, Mr Mahoney.

**Mr Mahoney:** He is not allowing the witness to answer the question.

**The Chair:** That is not a point of order, Mr Mahoney.

**Mr Mammoliti:** Mr Chair, that does not give him the right to call anybody a moron.

**Mr B. Ward:** On a point of order, Mr Chair: I would like to apologize to the witness. He takes his time to come down here to present a brief, and I think all sides have gotten excited, Mr Chair, and these things happen.

**The Chair:** That is not a point of order. Thank you.

**Mr B. Ward:** But I apologize.

**Mr Gibb:** Thank you, and I hope we will have extended time in order to answer some more questions.

**The Chair:** We will return to Mr Mammoliti.

**Mr Mammoliti:** I only have 30 seconds left and I just want to say to you that it is not our position, my position or the government's position, to do away with profit-making centres. It is our position, and it is my position as well, and my constituents' position for that matter, to spend tax money accordingly. I feel, frankly, that when you are talking about this competitive profit-making area, sometimes it has a detrimental effect on children and ultimately that is all I care about in this particular case: the children. I want to make the right decisions for those children. You may respond, if you want.

**Mr Gibb:** We also want to make the right decisions for the children. Our centres are inspected annually for licence, we encourage the ministry representatives to come in quarterly. We dream up things to have them come in just so we can talk to them. Everything we do is wide-open, it is public, and we are complying with every guideline and every suggestion put forward by the Ministry of Health, the Ministry of Community and Social Services, the fire department and everybody else. I personally am offended that you would say that we would deliberately cut the food for children, take bread away from children just to make more money.

**Mr Mammoliti:** No, I did not say that.

**Mr Gibb:** My kids go to those schools.

**Mr Mammoliti:** I did not say that.

**The Chair:** Mr Mammoliti, your time has expired.

**Mrs Cunningham:** Withdraw.

**Mr Mammoliti:** Withdraw what?

**Mrs Cunningham:** Withdraw all your questions.

**Mr Mammoliti:** Do not be ridiculous.

**Mrs Cunningham:** That is the only way you can convince the gentleman.

**The Chair:** All right. Mrs Poole.

Interjections.

**The Chair:** You guys are disgusting, you really are.

**Ms Poole:** Mr Gibb, thank you very much for your presentation today. The government has made the statement that the intention of this policy is not to force private centres out of business, but it has become obvious that is not how the private centres feel. Could you please tell us the financial impact of their decision on your particular centre? You have said you are facing bankruptcy. Is it a fact that you cannot replace any subsidized spaces if those children move away from your centre? Is it a fact that if their siblings want to come into your care, they will not receive any new subsidies? Is it the child care workers' salaries, the fact you will not get future enhancement? What exactly is it that is going to force you out of business?

**Mr Gibb:** I think all those things you have mentioned are going to have an impact. Children move through the centre as they grow older and if we are unable to replace them with fee-assisted children, it means that those people, those teachers, those women who work in those rooms will eventually have to be let go. Although as long as I can remember we have tried to keep those people on staff, eventually we would have to let them go. So yes, it is going to have an impact.

If the direct operating grant changes, we would be out of business tomorrow. There is no question. I will not run without qualified staff. I will not put my children—and they go to my schools—at risk in unlicensed facilities managed by people I do not feel are qualified.

**Mr Mahoney:** You could always cut the food budget.

**Mrs Cunningham:** Cut out the afternoon snack.

**The Chair:** Mrs Poole.

**Ms Poole:** Thank you for those comments.



**Mr Jackson:** Where are the examples?

**Mr Mammoliti:** Never mind.

**Mr Jackson:** No, the member has made a charge. On a point of order, Mr Chairman: A charge was just made and I would like the member to clarify what basis he has for that charge.

**The Chair:** That is not a point of order. You know that, Mr Jackson.

**Mr Mammoliti:** Do not take what I say out of context.

**The Chair:** Mr Mammoliti.

**Mr Jackson:** Watch your mouth, George.

**Ms Poole:** I wish we would discontinue taking up the witness's time with these exhibitions.

**Mr Mammoliti:** I agree.

**Ms Poole:** Well, you are part of it.

**Mr Mammoliti:** Talk to your partner over there.

**Ms Poole:** Mr Gibb, the minister has said the issue is not quality, the issue is strictly accountability, yet the government appears to have no plan to increase accountability. They have not shown how the private centres are unaccountable. You are already getting existing direct operating grants. Could you tell us how you have to justify to the government your spending so that you are able to get these grants?

**Mr Gibb:** At the start of every year in which the contract is renewed, we submit a plan to the ministry office outlining not only how we are going to use the grants but our entire salary plan. At the end of the fiscal year we report to the ministry how the moneys that were received were paid. It is full disclosure. They have the opportunity to come in and examine our payroll records or any other records that they wish to. In the three years in which I have been involved in the direct operating grant, we have never had a single question on how our direct operating grant or in fact how any other moneys we received have been used.

**Ms Poole:** One final question on the Gallup survey that was done. You have mentioned the one question that was asked about choice. A vast majority of the people of this province who were surveyed did indicate that they felt they should be entitled to this choice. What was the other question on the survey?

**Mr Gibb:** The other question was, if the government proceeds with plans to take over the private sector, should it compensate—first half of the question—and second, at what level should it compensate the private sector. The answer overwhelmingly was yes, they should compensate the private sector at full market value, 100% of the value of the business.

**Ms Poole:** Which is not happening under this policy.

**The Chair:** Thank you, Mr Gibb, for a very thoughtful presentation.

**Mr Gibb:** Thank you.

**The Chair:** Before we move on to the next witness, I think we should reflect a little bit upon the fact that interjections are always out of order—not just sometimes, always. As we are trying to go through this process, we have a very busy schedule. It makes it very difficult for me as the

Chair to keep the time that you have asked me to keep when we have some of these interjections that are, quite frankly, not helpful, from all sides.

**Ms Poole:** On a point of order, Mr Chair: Before we continue, yesterday we had asked the ministry for information. While some of the statistical data may not yet be available, we had asked for a copy of the Levy-Coughlin partnership report. I wondered if that has been made available to us yet.

**The Chair:** Apparently the answer is yes.

**Ms Poole:** I wonder if that could be distributed, because it does have an impact on our questioning and some of the assertions that are being made about quality and level of care. Would it be possible to have one copy per caucus?

**Clerk of the Committee:** I can get copies made if you want. Is one copy per caucus sufficient?

**Ms Poole:** Could the ministry tell us when the balance of statistical information we requested will be available?

**Clerk of the Committee:** The ministry has already indicated to me that some information will be forthcoming this morning.

**Ms Poole:** We look forward to it. Thank you.

1100

#### WEE CARE DAY CARE

**The Chair:** The next presentation is from Wee Care Day Care, Joan Zimmerman and Kristy Burnett.

**Mrs Zimmerman:** Mr Chairman and members of the committee, I thank you very much for this opportunity to appear here today. I am extremely unaccustomed to public speaking, so please bear with me.

**The Chair:** If you would just introduce yourselves.

**Mrs Zimmerman:** I am sorry, I am Joan Zimmerman and this is Kristy Burnett, from Wee Care Day Care in Niagara Falls, Ontario. It is a private centre with capacity to serve 77 children per day.

The perspective I wish to present today is really quite personal and related to our small business. We have been in operation for 11½ years. Originally we had the idea to start the centre in order to provide infant care. One of my original partners and I were experiencing difficulty placing our own infants and thought it would be an excellent idea. We came to learn that it is not economically feasible to provide only infant care and therefore we provided care for children from three months to five years. We were the first in Niagara Falls to offer care for infants.

When we originally set up, we did not really know too much about corporate structure or anything like that. It was really almost accidentally that we decided to be a private company, based on the fact that someone offered to sit on our board who was offering us some help at the time, but running her own centre connected with the local community college in a very different way than we wanted to run ours. We were sort of horrified to think of her sitting on our board and we went the other way.

We decided to have an open-door policy, which was not practised at the college at that time. We also felt



strongly about displaying affection to our children, to getting down on the floor with our children and playing with them, which was not encouraged at that time either. It seemed very strange that young women who elected to go into the early childhood education program because of their love for children were then basically told to back off and leave them alone, and intervene only when there was a problem. We felt kids needed 12 hugs a day and if they were with us for eight hours, they were going to get a large proportion of them with us.

We feel that our program is a high-quality program. It is related to people, both my partners and I who run the program and our staff. Incidentally, despite the fact that none of us is making any money at this, we recently entertained three staff members on their 10th anniversary of employment with us and two more are due to be entertained this summer. Our feeling is that the Day Nurseries Act is a comprehensive document. It is occasionally ambiguous, but our feeling is that a total compliance with what is contained in the Day Nurseries Act guarantees a high level of quality in any day care centre. We insist upon compliance from our staff, we insist upon it from ourselves and we have an excellent licensing record.

Because we are onsite every day, my partners and I—we cover 6:30 to 6 virtually every day—we can respond immediately to the concerns of parents and to anything that goes on with the children, as well as to the staff. We are always there. It is an interesting fact that is not obvious to anyone what our auspice is. Parents have virtually never inquired until recently, when it has made the news a little bit because of the plan of the current government. We had never had an inquiry before that as to how we were set up. We have even had a couple of people on staff as part-time staff members who left town; one was married and moved far up north and when the down payment on pay equity came through last December, she called to see if we had her share of that in our centre as well. Of course, we did not qualify for that as we were a private centre, but she had no idea and she had worked there. It is a non-issue.

I have one story that sort of pointed out to me what it would be like to deal with the board. At one point we decided it was irresponsible to continue to use paper diapers and throw away lots of diapers in our centre, so I discussed it with my two partners and we said, "Yes, let's give cloth diapers a try." We called around for prices and implemented it. This process took about a week.

Subsequent to that, I heard from a person at a non-profit centre in a neighbouring community that was considering the switch as well. She needed to round up her four additional board members during the daytime when they could visit us and discuss the issue, and they were discussing it with several other places as well and planning to implement it perhaps nine or 10 months hence, in the spring. It just seems very unwieldy.

We feel there are many ways to improve the system. The rules for subsidy in our locality need to be looked at, as do more detail and clarity in the Day Nurseries Act and especially increased ministry staff to monitor and advise and effect changes where problems exist in centres. We too

have no problem with our annual inspections, but these people are very busy and you do not see them otherwise.

We feel, in fairness, that our staff deserve the wage enhancements that other staff get. We are not looking for the bailout; we have managed to stay in the black this length of time.

Finally, the board would not hire us. If I sat on the board, I would not hire me to run my centre, because I am a nurse. I am not an early childhood educator; nursing is my background. My partners were nurses. We are not business people and we are not teachers, but we have done quite the job, I think, for 11 years.

Kristy is a staff member. Is it okay if she addresses you with what she wants to say?

**Ms Burnett:** I just want to add that I have been working in the centre for eight years. I graduated from college and I work at the centre. I did a lot of placements. I had little choice of where I was going to work in Niagara Falls, as we are in an unique situation. Seven of our 10 day care centres are commercial, leaving me with a limited choice.

I chose this day care after touring it and having my interview because I did have a choice of where I was going to work. I am angry that the NDP is going to take that choice away, as we will not be able to have the personalized feeling I have working with my owners each and every day and not worrying about a chain of command or asking a question and waiting a week for it to be answered. I like working in the commercial centre for that reason.

I did have experience with a board when I was on placement. I have had experience in placement in non-profit centres and I did not separate them because they were non-profit or because they were commercial. I separated them because it was the people who ran them, supervised them and worked in them who made the centre, not whether there was a board or there was the owner sitting there. It is the people who run it who make your centre.

The ministry comes in and out of non-profit centres; it comes in and out of commercial centres. If they were not running up to par, they would close down. It is the same way; it is the people who run it. It is not whether you are non-profit or commercial that gives you better programming or better quality or better anything.

It is unfair that you have presented commercial workers with the consequences we are faced with. We get half of the DOG; we get none of the pay enhancement. We should have been entitled to that money. If the NDP was going to make quality day care, why was the non-profit sector not offered rent enhancements or toy funds or whatever? Separate the businesses, not the people. As an ECE I do the same job. I work 40 hours a week. I give the best loving, quality care I can, as do non-profit staff. It is an unfair and unjust situation you have put me in. Now, on top of it, I have to face unemployment because I do not know if my owners are going to convert. I am going to lose my seniority. I will lose my placement. I am program director and I have worked hard to get there, and I have no guarantees of what I will be when I go into a converted centre or a non-profit centre.



I have spent the last four months making countless phone calls to MPs and MPPs, doing media interviews, sitting through regional council meetings and city council meetings, just to get our point across. I should not have had to do that, because I am a commercial ECE, not a non-profit.

We are happy to say we did sway our city council and our regional council into believing that what the NDP is doing is unfair. You are treating us unfairly. You are taking away our choice, you are taking away parental choice, and we are just not going to stand for it. Thank you.

**The Chair:** Thank you. The first caucus is the NDP caucus. Mr Perruzza, three minutes.

1110

**Mr Perruzza:** Mr Chair, I would like to go second. I am going to defer to my colleague, Mr Ward.

**Mr B. Ward:** Joan, some of the criticism I have heard—I do not know if it is valid or not—against the for-profit centres is that there is a reluctance to open the books, so to speak, and to say, “Here’s how much we made, here’s how much I am taking out as a salary and here’s what our expenses were.” Is that a fair criticism on your part?

**Mrs Zimmerman:** No one has ever asked us. We have heard that criticism but no one has ever asked us, aside from the forms indicating how we spent the direct operating grant, how it has been disbursed.

**Mr B. Ward:** But you would not have any problem?

**Mrs Zimmerman:** No, we would not.

**Mr B. Ward:** Do you share that information even though nobody has ever asked?

**Mrs Zimmerman:** Would I share it?

**Mr B. Ward:** Have you?

**Mrs Zimmerman:** I do not have it at my hands.

**Mr B. Ward:** No, no. Have you ever shared it in the past?

**Mrs Zimmerman:** We share with the staff to the extent that they certainly know what we charge the parents for their children’s care—

**Mr B. Ward:** So you do share the information.

**Mrs Zimmerman:** —and they know that 75% to 80%, as a rule, goes towards wages.

**Mr B. Ward:** Now, you said you have been in the black, not making much money, but in the black over the past few years?

**Mrs Zimmerman:** We have not sunk.

**Mr B. Ward:** Kristy, how long have you worked there?

**Ms Burnett:** Eight years.

**Mr B. Ward:** How much profit did you make last year?

**Ms Burnett:** I do not think we made any profit last year.

**Mrs Zimmerman:** Staff would know that; they did not get their bonuses at Christmas.

**Mr B. Ward:** Okay, and five years ago?

**Ms Burnett:** Five years ago?

**Mr B. Ward:** You are not sure?

**Ms Burnett:** Well, no. I could not tell you what my Christmas bonus was five years ago either.

**Mr B. Ward:** Does that ever come up in discussion?

**Ms Burnett:** We know if the day care centre made a profit, if it made some money, because it goes back to us.

**Mr B. Ward:** Yes, like at the end of the year Joan says: “Here’s what we did. We had a good year so we can give \$100,” or whatever. “We had a bad year, sorry.”

You have how many employees?

**Ms Burnett:** Eleven, full-time and part-time, counting the cook.

**Mr B. Ward:** You have two who have 10 years and one more coming up?

**Mrs Zimmerman:** Three who have 10 years and two more coming up.

**Mr B. Ward:** What would be the others have, on a general basis—five years, six years? You have eight years, Kristy?

**Mrs Zimmerman:** We have a number of staff who have been there about three or four years; they are younger. It seems we lose staff when they have their second child because they cannot afford day care and it seems better to stay home.

**Mr B. Ward:** Just one last question. Part of the philosophical concern is taxpayers’ money going towards a business that is making money. Do you think that is proper as a philosophy?

**Mrs Zimmerman:** Philosophically? I do not know that much about government, but I know that it spends money to attract business all the time. I know that there are marketing boards.

**Mr B. Ward:** But they give on an annual basis.

**The Chair:** Thank you, Mr Ward. Mr Mahoney has some questions.

**Mr Mahoney:** Thanks for your presentation; you really did a terrific job. Maybe public speaking is in your future. I was also interested in your comment about the kids needing 12 hugs a day. As you can see from how acrimonious we get around here, maybe we could use that too.

**Mrs Cunningham:** It might help.

**Mr Mahoney:** Thanks, Dianne. I will take the hugs from her.

I want to enter into the record a couple of words, handed out by the presenters, from the city of Niagara Falls council, signed by Mayor Wayne Thomson and carried unanimously. The essence of the resolution is that the city is calling for municipalities to “unite and help the commercial day care operators to be treated equal to not-for-profit day cares”—that is a key word—“allow them to continue to operate and keep the government from using millions of taxpayer’s dollars to take over a quality system that already exists.”

The reason I wanted to read that into the record is because we heard the minister yesterday say that a system

does not exist. I suggest it does exist, and it is one of cooperation between non-profit and commercial day care and municipal day care, and working with the colleges. We instituted one in my own community, when I was on council in Mississauga, which was cooperative between the region of Peel, the city of Mississauga and Sheridan College to provide a workplace day care facility in our new civic centre in Mississauga. It has worked tremendously well, funded partially, of course, by the provincial government. So everybody is involved in this. If that is not a system, I do not know what is. So I thank you for bringing that resolution.

You have heard some questions directed to other presenters about cutting costs in areas, implications that perhaps food was cut back or implications—although the minister has admitted that quality is not at issue here, clearly lots of folks are suggesting that quality is at issue. The coalition, in fact, boldly suggested that not-for-profit day care provides better quality than for-profit.

Interjection.

**Mr Mahoney:** Well, they said that yesterday. I certainly do not accept it, but that is what they said.

Concerning the other aspect, that of parental involvement, I wonder what would happen if you ever turned parents away from having input, whether they were officially on a board or simply mom and dad coming in to ask about what you are doing with their kid. I wonder how they would view that.

**Mrs Zimmerman:** I think, and rightly so, they would withdraw their child. I think that is their prerogative. They are still in charge of their child, whether there is a board or there is us or whatever. We just happen to be extremely responsive. We feel very strongly about that.

**Mr Mahoney:** Could you just respond to the implication of cutting corners—

**Mrs Zimmerman:** And quality?

**Mr Mahoney:** Quality, and food particularly, which was mentioned by a previous NDP questioner.

**Mrs Zimmerman:** Food is a great source of pride. I know that in some centres it is heavy on the weiners on the diet. We are not.

**Mr Bisson:** Pardon me. You said weiner salad diet?

**Mrs Zimmerman:** No, they are heavy on weiners; hot dogs are served a lot.

**Mr Bisson:** I thought I misunderstood.

**Mrs Zimmerman:** It is not good idea. We do not serve it. We serve very nice food. We also shop at No Frills ourselves.

**Mr Mahoney:** Oh, oh.

**Mrs Zimmerman:** I am sorry. We shop at discount stores ourselves. We run around ourselves and do shopping.

**Mr Bisson:** I think Steve grew up on weiners.

**Mr Mahoney:** At least I grew up.

**Mrs Cunningham:** Touché.

**Mrs Zimmerman:** This came up yesterday, another example, the use of quality. In our centre, which is a private centre, the children are supposed to be “standing

around in a daze”; that is a quote from the coalition. And my partner said, “No, no, they’re wandering aimlessly.” I said, “Well, at least they’re getting their exercise.” That is not the case.

**Interjection:** Good for you.

**Mr Jackson:** Kristy, I want to thank you for the clarity of your one-liner, which I hope will find its way into our report. Our government has got to stop separating businesses—they should separate the businesses, not the people. I thought that was a very good line. I wanted to thank you for that. I am sure they will not use my reference; they will use your actual Hansard reference, now that I messed that up.

Joan, I want to focus in a bit, if I may, on the delicate part of your presentation. I know how difficult it must be for you, knowing that for you personally, you have no alternative but to be thrown out of work.

**Mrs Zimmerman:** That is the likely consequence.

1120

**Mr Jackson:** I have talked to several owners, all of whom are women, who are in a similar situation. I have talked to one woman in Kitchener who not only lost her business but lost her house. Her marriage is extremely stressed because she mortgaged the family home. It is a joint husband-and-wife decision. Women are not the greatest business people, and they generally stay in for the altruistic reasons. I have had some come into my office in tears, and I have said, “For God’s sake, close your doors. You’re going under,” and they will not. They go the extra mile for their staff. They wait till the end of the season to make sure the children are not disrupted. We are watching them lose their homes and so on. I think this is the cruellest part of this.

I do not want you to specifically refer to the circumstances you may be under, but I want you to share with this committee, so that possibly we can get your reaction to the report, how you feel about being put in that position—with a gun to your head—with the government’s recent series of changes which further compromise you. You will be expropriated without compensation. That will hurt you personally and financially.

**Mrs Zimmerman:** Yes.

**Mr Jackson:** I would like you to comment a little more in depth, if you would. It is a difficult part for you, I know, but please help us with a deeper understanding.

**Mrs Zimmerman:** It is. I really cannot be in-depth. I just think a one-word answer is “sad.” It is just sad. We have worked very hard. We have built a lovely centre. We had wonderful times with these kids and with our staff. We are damn good at what we do, and we are going to be gone. We cannot even go back to the hospital now.

**Mr Jackson:** My final question: I wanted to suggest to you that a nurse would be the ideal person to have in a centre.

**Mrs Zimmerman:** It is comforting to the parents.

**Mr Jackson:** There are special-needs children. We know we have problems with injections and medical interventions that are required. There is a whole series of benefits.



Finally, would you not say that the taxes you pay in the region of Niagara far exceed any so-called profit that may have existed in the past?

**Mrs Zimmerman:** Absolutely.

**The Chair:** Thank you for taking the time to come and appear before the committee.

I would just like to take the opportunity to remind both members and people in the room that we do have a translation service available. The receivers are here.

#### RÉSEAU ONTARIEN DES SERVICES DE GARDE FRANCOPHONES

**M. le Président :** La prochaine présentation est du Réseau ontarien des services de garde francophones, Claire McCullough. Bonjour. Vous avez 20 minutes.

**Mme Parent-McCullough :** Mon nom est Claire Parent-McCullough. Je suis la déléguée du Réseau ontarien des services de garde francophones. Le Réseau a pour mandat d'assurer le développement d'un éventail complet de services de garde en français en Ontario. Il regroupe une cinquantaine de services à but non lucratif.

Une cinquantaine de services semble peu, mais je dois vous dire que c'est le nombre que nous avons en Ontario présentement — il n'y en a pas plus que ça — de langue française, bien sûr.

Il y a très peu de services privés de langue française en Ontario. À ma connaissance, il y en a quelques-uns dans le nord de l'Ontario, à Sudbury, et quelques-uns dans l'est et le sud-est.

Si les francophones avaient attendu après les services privés pour recevoir des soins pour leurs enfants, on n'en aurait pas eu du tout puisque c'est très rare, et ça veut dire qu'il n'y avait aucune accessibilité aux services de garde, point.

L'an dernier à Windsor, le service privé de langue française s'est converti à un service à but non lucratif parce que les propriétaires n'arrivaient à faire aucun profit et avaient même de la difficulté à vivre et à survivre.

Un autre service, à Kapuskasing, a aussi changé son statut. Un service privé de langue française est devenu un service à but non lucratif bien avant l'annonce de M<sup>me</sup> la ministre et s'est converti pour les mêmes raisons, parce que le service n'arrivait pas à avoir des profits, et même tout ce que le propriétaire gagnait retournait au service de garde.

Les personnes responsables de ces centres immédiatement convertis, avec un comité d'administration et quelques prélèvements de fonds et de l'aide du ministère des Services sociaux et communautaires, ont pu enfin augmenter leur matériel et augmenter un peu le salaire des éducatrices. Chose qui est un problème, c'est le renouvellement du matériel. On nous a dit que c'était une difficulté pour ces deux centres-là.

Maintenant ces deux centres travaillent toujours de très près avec les enfants et sont membres du Réseau. Il semble qu'ils sont très heureux d'avoir changé leur statut.

D'après nous, le service à but non lucratif répond mieux aux besoins des francophones. La communauté est présente, elle s'engage et elle voit à la qualité et au bon fonctionnement du service. Elle est informée complète-

ment des revenus et des dépenses, et à l'assemblée annuelle la démocratie est exercée. Enfin, pour les francophones il semble que les services gérés par et pour les francophones, comme à toutes les autres institutions, soit la meilleure avenue.

Le Réseau croit que les fonds publics ne devraient pas être utilisés pour faire des profits. Il est difficile de comprendre qu'une petite entreprise qui ne fait pas d'argent résiste et continue à rester en affaires. À long terme c'est très difficile à expliquer.

D'après nos expériences, et je l'ai mentionné plus tôt, les services privés de langue française ne faisaient pas d'argent et à notre avis ne pouvaient pas contribuer réellement à l'économie comme on l'entend aujourd'hui, d'autant plus que ces services inscrivaient souvent des enfants de langue anglaise parce qu'ils n'arrivaient pas à combler les places. Le service devenait un service plus bilingue, et pour nous un service bilingue veut dire à 90 % anglais et 10 % français. Il est très difficile à ce moment-là de rappeler la langue maternelle à l'enfant et de parler de culture franco-ontarienne.

Le parent a et aura toujours le choix puisque nous croyons fermement qu'il est le premier responsable et le premier éducateur de son enfant. Il a aussi le choix entre plusieurs services à but non lucratif, et ses enfants peuvent s'inscrire dans ces services-là sans aucune difficulté. Il semble qu'on arrive toujours à se trouver une place et que les listes d'attente ne sont pas aussi longues pour nous, enfin, francophones.

Le personnel dans les centres privés, puisque vous posez la question, pourrait toujours trouver de l'emploi dans les centres à but non lucratif. Chez nous il y a pénurie de personnel francophone. Pour la région du centre, ici aux alentours par exemple, on doit souvent avoir recours au Québec pour avoir des éducatrices de langue française parce que très peu de collègues enseignent en français le programme en éducation des petits. Il n'y a même pas longtemps nous avons obtenu un programme en éducation des petits sous le format Forma-Distance pour arriver à combler cette lacune et pour avoir dans nos centres le plus de personnel possible qui parle la langue.

Plusieurs études ont démontré que les centres à but non lucratif paient mieux leurs employés, que le matériel est adéquat et que les centres fonctionnent aussi bien et même très bien en comparaison. Je ne dis pas que les centres privés ne fonctionnent pas bien, mais je veux dire que les centres à but non lucratif sont aussi bons, sinon meilleurs, que les centres privés.

Pour nous, francophones, et je le répète, on n'avait le choix, vraiment, que d'ouvrir des services à but non lucratif. C'était un but et c'était nécessaire pour la survie de notre langue et de notre culture.

1130

**Mme Poole :** Merci pour votre présentation. Je parle en anglais parce que mon français est mauvais. Excusez-moi.

**M. Bisson :** Pas du tout. C'est très bon.

**Ms Poole:** That is it. I am not going to subject your ears to anything beyond that.



Claire, you mentioned that you have had several centres, and I think you mentioned Kapuskasing and Windsor, which were private centres and have now converted to non-profit centres because they just cannot make ends meet. I think this certainly substantiates what a number of people have told us, that it may be called the for-profit sector, but there is not a lot of profit to be made in that sector. As far as you are aware, are there still existing private sector francophone day cares right now, or are they pretty well all non-profit?

**Mme Parent-McCullough :** Quelques-uns. Il reste quelques services français mais la majorité des services sont à but non lucratif. Je ne connais pas le nombre exact. Je dois vous dire qu'à Ottawa je connais trois centres privés. Je crois qu'il en reste un à Sudbury et il n'y en a aucun dans le sud-ouest maintenant. Ici au centre il n'y en a pas non plus, alors c'est très peu de services privés de langue française.

**Ms Poole:** It sounds like there are very few left. This announcement will not have much impact on the francophone community because you have only—what?—five or six that you have named that are private right now.

**Mme Parent-McCullough:** That is right.

**Ms Poole:** What about the \$10.8 million the minister has announced as a bailout for non-profit centres? Are any of those francophone centres which have had difficulty surviving financially and need extra assistance? Are you aware of any in your organization of 50 that will need help from the government in order to put their finances in order?

**Mme Parent-McCullough :** Est-ce que vous parlez du financement que M<sup>me</sup> la ministre a annoncé pour la conversion des services ? Je ne suis pas certaine que j'ai bien compris la question.

**Ms Poole:** Yes. I am sorry. I should have been more explicit.

**Mr Jackson:** The ones that are in arrears or in operational deficits; that is the question.

**Ms Poole:** When the minister made her announcement in December, she mentioned that they were going to set aside \$10.8 million that really had nothing to do with conversion. It was just to help non-profit centres that were having financial difficulties. I wonder if any of the 50 francophone groups in your organization were having difficulty surviving and needed extra assistance.

**Mme Parent-McCullough :** En toute honnêteté, les services de langue française fonctionnent comme les services de langue anglaise : avec difficulté et souvent sur la ligne de crédit. Aux alentours de Noël, les éducatrices ont reçu le supplément de salaire qui a été annoncé et donné par le gouvernement, et quelques services lui auront piqué dans l'enveloppe budgétaire pour les soins ou pour augmenter leurs revenus ou pour stabiliser, plutôt, leurs revenus.

Une chose qui n'a pas nécessairement été faite ou dont on ne sait pas trop — c'est pour ça que j'hésite à répondre à la question — c'est qu'il n'y a pas eu un montant spécifique d'argent réservé aux services de garde de lan-

gue française. C'est un montant global, et le service qui en aura besoin fera sa demande.

**Mr Jackson:** You made references in your opening statement to training services. Has l'Association canadienne-française de l'Ontario undertaken any discussions with the provincial government with respect to more training of francophone early childhood education and, if so, where?

**Mme Parent-McCullough :** Ce n'est pas vraiment l'Association canadienne-française de l'Ontario qui a pris le dossier de l'éducation des petits; c'est nous, le Réseau ontarien des services de garde francophones. Nous avons fait des pressions auprès du ministère des Collèges et Universités et auprès de la Cité collégiale pour offrir un programme en éducation des petits complètement en français à travers la province. C'est là qu'on a eu en septembre dernier l'ouverture du programme en éducation des petits, Forma-Distance, et la collaboration de quatre autres collèges, soit Cambrian, Northern, Niagara et la Cité collégiale. Ils travaillent ensemble et collaborent pour offrir ce programme uniforme. C'est une première, et je dois vous dire qu'il y avait 100 personnes inscrites au premier cours en janvier. Il y avait encore 100 inscriptions. C'est vraiment bien.

**Mr Jackson:** When the minister was before us, she did not reference job protection for francophone or bilingual ECE workers; now that I think about it, I am surprised she did not. To what extent are you monitoring those ECE workers who would be unemployed at the moment? She did reference employment equity. We can only assume you are still on that list.

**Mme Parent-McCullough :** Je ne sais pas pourquoi on parle de «non employés» pour les francophones, parce qu'à date on cherche le personnel. Présentement il n'y a personne en chômage en éducation des petits de langue française. C'est même un problème pour nous. Il faut aller les chercher ailleurs. C'est sûr que si éventuellement quelqu'un arrivait qui serait obligé de prendre quelque temps de repos ou qui serait en chômage, j'imagine qu'on irait le récupérer immédiatement, parce que le Réseau est toujours en train de faire du développement des services de garde. Un des problèmes pour l'ouverture d'un nouveau centre est de trouver le personnel.

**Mr Jackson:** Finally, Mr Chairman, if I might make a request, the ministry yesterday referenced native program expansion, not Franco-Ontarian expansion. Could we ask for a breakout directly from the ministry, through research, of the total spaces the government is aware of, their auspice breakout, and if they could identify from my request yesterday about those who have converted, those which are classified as francophone service or bilingual service provision centres? Could I make that request on behalf of the committee?

**The Chair:** I think Mr Gardner has noted that for you.

**Mr Jackson:** And ministry staff have noted; they are nodding their heads as well. This is great. Thank you very much.



**M. Bisson :** Vous avez dit qu'il y a eu des services de garde à but lucratif qui ont choisi de faire la conversion pour aller dans l'autre secteur. Avez-vous vu la transition qu'il y a eu des déplacements de staff ? Quelles sortes d'histoires a-t-on vu par ces changements-là ?

**Mme Parent-McCullough :** Il n'y a pas eu de transferts de personnel.

**M. Bisson :** Y a-t-il eu du monde qui ont perdu leur emploi ?

**Mme Parent-McCullough :** Non, personne. Le personnel est resté en place et le service a fonctionné comme avant, sauf qu'il est devenu un service à but non lucratif avec un conseil d'administration. La directrice qui était la propriétaire est restée directrice et elle a gardé ses employés.

**M. Bisson :** Alors, dans les cas que vous avez mentionnés qui ont fait le transfert, le personnel est demeuré et les directrices ont été affectées comme directrices dans les centres à but non lucratif. C'est très intéressant.

Avez-vous vu une différence, quand on revient sur la question de soins ? Y a-t-il eu un changement ? Une des grosses obstinations qu'on entend c'est que certaines personnes croient que dans un centre à but non lucratif on a un meilleur service pour les enfants. Avez-vous vu une augmentation des services quand ils se sont convertis au but non lucratif ?

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**Mme Parent-McCullough :** Le changement qui a eu lieu était dans les outils de travail, dans le matériel pour les enfants, dans les jouets et dans les livres. Les livres de langue française sont toujours un petit peu dispendieux, et à ce moment-là le centre qui vient de se convertir a la chance d'acheter un peu plus de matériels, de mettre à la disposition des enfants de meilleurs jouets et de remplacer du matériel usagé. À la longue ça prend beaucoup de papier, de crayons et de colle et il faut que ça se remplace. L'augmentation a été de ce côté-là et aussi un peu du côté du salaire de l'éducatrice.

**M. Bisson :** En d'autres mots, il y a eu une augmentation dans les outils nécessaires pour livrer les services aux enfants. Avez-vous vu une augmentation dans la participation des parents suite à la conversion au but non lucratif ? Est-ce qu'on a vu des parents plus impliqués dans le centre ?

**Mme Parent-McCullough :** Oui, automatiquement, puisque pour se convertir ça prend un conseil d'administration qu'ils n'avaient pas avant. Je ne suis pas certaine du nombre de parents qui siègent sur le conseil d'administration, mais en général on a de six à huit personnes sur un tel conseil. Ces personnes-là sont impliquées immédiatement. Mais au niveau de la participation à l'intérieur du centre, je ne peux pas répondre. Je ne le sais pas.

**M. Bisson :** Vous avez touché à un point qui est très intéressant pour la communauté francophone. Il manque des outils au système collégial pour faire l'entraînement et la formation des enseignantes pour les centres. On oeuvre pour un collège et une bonne journée on va avoir nos collèges dans le nord et dans le sud-ouest.

Je pense que le point dans cette discussion est une question d'idéologie. C'est pareil à la discussion qu'on a

eue en 1960 faisant affaire avec le système de santé qu'on avait à ce temps-là. Les hôpitaux privés disaient : «Ne viens pas nous dire quoi faire dans nos hôpitaux. C'est nous, les gérants des hôpitaux, qui savons le mieux comment livrer les services.» Les docteurs, certains professionnels et d'autres ont pris les mêmes obstinations qu'on voit aujourd'hui.

Voyez-vous un parallèle entre les obstinations de 1960 et aujourd'hui faisant affaire avec le système de santé ? Je pense arriver à ce point-là parce que le gouvernement de ce jour-là a pris la décision que ça allait devenir un service avec les données d'un centre public et la politique a déclenché ce centre-là. Personne ne parle contre le système public qu'on a maintenant. Voyez-vous des parallèles, et pensez-vous que les objectifs du gouvernement puissent être mieux servis à travers les centres à but non lucratif pour mieux desservir la population et les enfants ?

**Mme Parent-McCullough :** J'aurais tendance à dire oui. Il y a à peu près le même parallèle pour les écoles il y a quelques années puis les hôpitaux que vous avez mentionnés. Mais vous m'avez aussi fait penser à un point très important que je n'avais pas mentionné.

On s'en va, j'imagine, vers un service de garde ou un service où l'enfant a le droit de recevoir un service de garde. Et le droit qu'a l'enfant devient un peu comme le droit à l'éducation, finalement, à un service un peu «universel», parce qu'il reste que les parents pourront ou devront, à mon avis, toujours payer un certain montant d'argent pour que leurs enfants soient en garderie, à l'école etc. Mais il reste que maintenant ils ne peuvent plus se le permettre. Si on s'en va vers un service plutôt universel, il est important que le service soit dirigé et administré par la communauté, dont les parents et les conseils d'administration.

**The Chair:** The next presentation is from the Brant Children's Centre. I think we need to take a couple of minutes to set up the VCR here.

#### BRANT CHILDREN'S CENTRE

**The Acting Chair (Mr Mahoney):** Mrs Poole, we are going to try to call the meeting to order, if that is all right. I invite the presenters to begin whenever they are ready by introducing themselves for the purposes of Hansard. I believe we have 20 minutes for your presentation, which hopefully will include time for questions.

**Dr H. Knoepfli:** My name is Heather Knoepfli. I am a director and co-owner of Brant Children's Centre in Burlington.

**Mr P. Knoepfli:** My name is Peter Knoepfli. I am a co-owner and also the general manager.

**Dr H. Knoepfli:** We wish to thank the committee for the opportunity to hear our remarks today on the provincial government's child care policies of December 2, 1991, as they impact on private licensed providers like ourselves.

This morning we have brought a short video, not very good. We took it last Thursday, but I thought we might show a couple of minutes of it at least, to give you a flavour of Brant Children's Centre because, as the old cliché goes, a picture is sometimes worth a thousand words.



**Interjection:** Providing we can get a picture.

**Dr H. Knoepfli:** Providing we can get a picture.

**The Acting Chair (Mr Mahoney):** Maybe while you are figuring that out, you can go on with the brief.

**Dr H. Knoepfli:** Not to worry.

Brant Children's Centre and preschools were established privately 25 years ago in Burlington. Twelve years ago Peter and I purchased this organization and its facilities from the founder after it was offered to and rejected by the region of Halton. We have owned and operated Brant ever since.

Brant consists of two satellite nursery schools located in churches in Burlington and a 9,500-square-foot main child care centre in which we are licensed for 171 children. Combined with our preschool programs, before and after school care and summer day camps, we provide programs for approximately 400 children per week. We also provide, as do several other private centres in Burlington, transportation services for many of these children.

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We manage a staff of close to 50 individuals, both full- and part-time. We believe we are well qualified for what we do. I have a PhD in education, as well as an early childhood education equivalent and extensive teaching experience. Currently I am a part-time faculty member in the school of early childhood education at Ryerson here in Toronto. Peter, on the other hand, has an MBA degree plus a number of years of business experience.

We purchased Brant in 1980 for several reasons. Most important, we wanted to be in our own business, we wanted to do something together, and child care appeared to be an area that married our mutual interests. It was also an area in which we felt we could make a social contribution to the community as well as a livelihood for our family. I believe we have been successful on all counts. Although we spend long hours overseeing Brant, including quite a few weekends on repairs and other projects, we have a reputation for quality and innovative programming, and we have an excellent staff. Many of our staff have been with us 10 years or more. In fact, the first individual hired by Brant in 1968 is still with us as a supervisor of our senior kindergarten program.

I will just halt here in my remarks, and we will just take a fast look at the video. This is the front of our school, looking in from the parking lot. We are located on a fairly major street in Burlington. That is our little sign, and this is a shot of our lobby. We have quite a large lobby. The building, by the way, was built in the mid-1970s, I believe mid-1972, designed by the founder specifically for young kids. It is really a first-class facility from a design point of view. That is the school mascot. His name is Drummer. He has been at the school for three years. The kids really like him. That is the menu board outside the kitchen. This just sort of gives you a quick overview of the lobby.

This is my office, not too—well, that is typical. I did not have time to clean it up, but that is kind of where it is at. It is very open. My stars, I forgot I was in it. But I have an office, Pete has an office. They call it early Renaissance. We have a staff room and a secretary's office. This

is a small computer room beside my office. We use it for computer programming and for small groups. We try to break our youngsters into small groups, and this is an area that they can use.

That is Rose's office, that is our secretary, the staff room. The staff were leaving very quickly as we were taking this. They were not terribly interested in being on camera. Okay, I will just let that run for a few minutes, and then we can just turn it off.

At Brant we strive for, and we believe we do provide, a range of programs and services at reasonable cost to our clients. We have consistently met all of the requirements of licensing and inspection. We have received many letters of commendation from parents over the years. We have invested heavily in specialized equipment ranging from adventure playgrounds to computers, from full-day field trips for older children to French programs.

**Mr P. Knoepfli:** What are the implications of the government's child care policies for us? In short, unless they are modified, current government policies may well lead to the closing of Brant Children's Centre within the next few years. Why do we reach this conclusion?

First, the wage differential given to non-profits by the government of \$5,200 per employee cannot be sustained over time. We will be forced to make up part or all of this differential for our own employee group. In order to recover this amount, we would have to raise our fees by 20% to 25%, which would be impossible to do, in our opinion, without major loss of enrolments.

Second, pay equity amendments which the government plans to impose on the child care industry will result in a further pay differential, we think, through proxy comparisons which we will have to meet. The government, as we understand it, intends to fully fund these pay equity adjustments for all non-profits. Pay equity will represent a second major escalation in our costs beyond the present wage differential created by disparities in government funding.

Finally, if the proposed new system of non-profit, directly funded licensed child care becomes a reality, the subsidized fee arrangements, as well as the existing direct operating grants, will disappear. Currently we work with the region of Halton to provide some 40 to 50 spaces for subsidized parents. Even now, the government appears to be trying to restrict the new fee subsidies from going to private centres.

The combination of loss of existing funding and subsidies along with far higher wage costs from the existing wage differential and proposed future differentials probably will mean that our business will cease to be viable. If a centre such as ours, which is relatively large and well established, reaches this conclusion, the cumulative impact of these policies upon smaller private centres no doubt will be devastating.

When the government contends that we can continue to exist as private schools with no government funding, no subsidies and much higher wage costs, it is forgetting that true private schools in Ontario only account for about 2% of all student arrangements, whereas private child care centres such as ours account for some 28% of all licensed spaces. It is difficult to compete against a free or heavily



subsidized alternative system. If two supermarkets stood side by side and the government chose to subsidize heavily one but not the other, how long do you feel the other would remain in business?

If Brant does close, everyone loses. The community loses a valuable child care and early education resource, one which, at a ministry average capital cost of \$18,000 per space, would cost over \$3 million to replace. The staff would lose their jobs. The parents and children would be uprooted and have to find new child care arrangements, and of course we would lose our livelihood. We would also likely lose substantially on any possible sale of our real estate and other assets, which are highly specialized.

**Dr H. Knoepfli:** Another question that is often asked, and I have heard it even in the presentations in the last couple of days, is, why would we not convert to non-profit? By so doing, we would be eligible for all grants given to non-profits. There are a number of reasons why this scenario has little appeal to us.

First and quite simply, there seems to be no economic incentive to change the status of Brant. The government to date has not provided any funds with which to buy us out at fair market value, to compensate us for the loss of our future earnings or our investment. The only funds announced are for the purchase of used toys and equipment. This would represent a small fraction of our investment in Brant.

Second and equally important, having managed our business autonomously, and I believe effectively, for the past dozen years, neither of us wants to work for an inexperienced, non-profit board of directors. Frankly, we find it somewhat degrading to be forced to turn over the management of our business to a neophyte board.

Speaking from personal experience, neither of us has much faith in non-profit boards, and we have both had quite extensive experience working on boards over the years. Their weaknesses are many: They typically are inexperienced; they are often a revolving door of people who come and go frequently. Parents on a board, for example, typically maintain interest only as long as their youngster is enrolled in the centre. Finally, boards are a source of potential conflict of interest, for example, when parents on the board are asked to raise fees to which they must contribute.

I understand that parent involvement in a centre is a key reason why the government has proposed a board mode of operation, but there are many other effective means to ensure parent involvement without forcing management to give up its decision-making authority. Parent evenings, parent committees, open communication with staff and management and suggestion boxes are only a few alternative ideas.

Other implications of the current government policies for us include the psychological stress and strain of not knowing what the future holds and the loss of professional status within the child care community and our own community, and of course there is the instability within our own business among our staff, not to mention the stress and strain on our own family.

Peter and I, and we believe we speak for many Ontarians, are philosophically opposed to the so-called new system of non-profit child care the government is trying to create. We implicitly and strongly believe in a system with a variety of different providers, which will ensure the broadest parental choice. The government claims that the current patchwork system is not working, that it does not provide accessibility and affordability. We would argue that patchwork, meaning a variety of providers, can respond more effectively to different children's needs and differing parental needs and expectations. We also know from past surveys, such as the one conducted in Halton in 1989, that parents want choice.

We feel from our experience that diversity breeds excellence, whereas the homogeneity of the proposed new system potentially can bring mediocrity. We find it hard to believe that if someone like ourselves offers to provide all of the facilities which we have, at no taxpayer cost, to meet all of the licensing and inspection requirements, to provide onsite daily management expertise, to provide good service at reasonable costs, the government of Ontario would not encourage us in these times of economic austerity and limited funding.

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**Mr P. Knoepfli:** Unfortunately the government of Ontario has decided we will not be part of its new child care system. We feel that under these circumstances the government should bend over backwards to ensure that we are fairly treated. Since the economic dice have been loaded against us in such a way that eventually may cause the loss of our business, we feel that at the least the government should be prepared to offer adequate compensation in the form of a buyout of our business at fair market value. The government's non-profit policies have destroyed the market for resale of our business which used to exist and is further evidence of the economic destructiveness of the current policies upon the private operator.

If a buyout is not possible, then the only other fair alternative is to grandfather us as an existing private centre, offering us the same funding arrangements as are offered to the non-profit centres. This means we should receive the same operating grants and wage subsidies for our staff. If the government does not feel that we are accountable enough to distribute these funds, we suggest that cheques be mailed directly from the government to our staff. Anything less than an equalization of operating grants is not only unfair to ourselves as owner-operators, it is grossly unfair to our staff.

As an aside, one should remember that current operators will not remain in operation for ever; five to 10 years is perhaps a realistic time frame. Five to 10 years is a very small period in the evolution of history, even in child care. I can only wonder why the government is so intent on wiping out such a small segment of its constituency when its ends or objectives could be met in an evolutionary fashion.

We are only one of some 650 small child care businesses in Ontario, employing in total several thousand staff, mainly women. We are in danger of losing our business because of the current policies. We believe our treatment



will not go unnoticed by the thousands of small business owners around Ontario who are wondering what form of economic discrimination the government is planning for them.

Finally, we must say to this committee that we believe the government is misleading all Ontarians about the proposed new system of child care which it advocates. In the first place, it has already decided what it wants: a universally accessible, directly funded, non-profit system. The so-called consultation, therefore, in our opinion is a sham because it does not allow for public discussion of the basic issue of the type of system Ontarians want.

In the second place, we believe it is difficult to argue, as the consultation paper does, that child care is an essential public service when studies have shown that approximately only one in 10 Ontario households require preschool child care. It is an important service for those who need it, but there is not a universal need.

Finally, even if one agreed with the definition of child care as an essential public service, there has not been any public disclosure or discussion of what it will cost the taxpayers of Ontario. We believe that the costs will be staggering and totally unaffordable for these taxpayers. We say this because we know that the total number of licensed spaces must be increased enormously from where they are today to accommodate not just the children who are currently in private child care centres but all of the children currently in unlicensed home settings.

In addition to capital costs, a government-funded and government-run system will cost much more per space to operate. As well, there will be no incentive to operate it efficiently until it becomes obvious to all that it is totally unaffordable. Estimates by the Association of Day Care Operators of Ontario and others show that the costs will run into the billions of dollars, which sooner or later will have to be translated into greatly increased taxes for Ontarians.

We hope, through hearings such as the one today, the government will reassess its child care policies and priorities. We challenge the government to find ways to channel limited resources into practical, affordable solutions for those who need child care support. This focus makes much more sense to us than the government directing its efforts at the destruction of one segment of licensed providers simply on the basis of ideology in order to clear the way for an unnecessary and unaffordable new social system in Ontario.

**The Acting Chair (Mr Mahoney):** Thank you very much. Technically we are out of time, but I will allow one question per caucus and the first is from Mr Jackson.

**Mr Jackson:** I will make a very brief statement, Mr Chairman, because I have to—

**Mr Perruzza:** You do not want to hear from them.

**The Acting Chair (Mr Mahoney):** When I am in the chair, we do not allow interjections.

Interjections.

**Mrs Cunningham:** You are doing well so far, Mr Chair.

**Mr Bisson:** On a point of order, Mr Chair: Are you making discrediting comments about our former Chair?

**Mr Jackson:** Mr Chairman, I simply wanted to indicate that this Brant Children's Centre is the centre which my children attend, not because we are a two-paycheque family but because through a serious illness my wife had to be hospitalized for an extended period. In the process, I made some inquiries in my community because I felt that for the local MPP to just open up the phone book and pick a day care centre—this was a hot issue in the province at the time; I thought I better do some homework.

I contacted some educators and I asked them where they have their children in this community. There were three centres recommended but most of the teachers in my community had their children placed at Brant Children's Centre. I said to them very briefly, "Your federation does not endorse private day care," and each one said, "That is just ideology. I am an educator and a parent and I want my child in the best centre possible."

I want to leave the committee with that thought because my children learn computer programming for a two-year-old and a five-year-old. They receive a wonderful program, and I want to thank you publicly for that. I appreciate the contact you had with my wife in the hospital and with me personally. I just think it is tragic that we are doing this to centres all across Ontario. Thank you.

**Mr White:** Mr and Mrs Knoepfli, you have mentioned that the region of Halton provides funding for 40 to 50 spaces and I believe—

**Dr H. Knoepfli:** A clarification, Mr White. We have a purchase-of-service agreement with the region of Halton. They subsidize the parents, who then choose to place their youngsters in our centre as opposed to somewhere else. They do not subsidize us.

**Mr White:** Okay, but at that level they are making a choice to place their children with you for 40 to 50 spaces out of your 171, I believe?

**Dr H. Knoepfli:** Correct.

**Mr White:** There is no intent by the region of Halton to cut off any for-profit centres at the moment, is there?

**Dr H. Knoepfli:** No.

**Mr P. Knoepfli:** Not at the moment.

**Mr White:** I also understand from your brief that you are in receipt of a direct operating grant?

**Dr H. Knoepfli:** The 50 per cent grant, correct.

**Mr P. Knoepfli:** Yes, 50 per cent.

**Mr White:** How much of your total budget over the year do you think would be attributable to either the region of Halton or the direct operating grant? What proportion of it?

**Mr P. Knoepfli:** It would be a minor part of the total but still a substantial dollar.

**Mr White:** Forty to 50 out of 171 spaces?

**Mr P. Knoepfli:** Yes.

**Mr White:** That is close to a third, is it not?



**Dr H. Knoepfli:** Recognize that many of the parents pay a per diem as well and in many cases pay substantially, so you cannot multiply fees by 50 and take a proportion of 171.

**Mr P. Knoepfli:** They are not totally subsidized. They are only partially subsidized fees.

**Mrs Y. O'Neill:** I would just like to confine my questions to the staff at your centre because obviously, both from your own remarks and those of Mr Jackson, they must be extraordinary people. I would like to have you tell me a little bit about what their training is and then what effect this announcement will have on the staff.

**Dr H. Knoepfli:** In a nutshell, the majority of our staff are qualified in terms of either a university degree or an ECE from a community college. In our infant and toddler department we have, I believe, two NNEBs, one of whom also has an ECE, and we have a nurse on staff as well.

**Mrs Y. O'Neill:** Highly qualified people. What effect is this announcement going to have on these people's lives?

**Dr H. Knoepfli:** My staff is devastated, in a nutshell. They are disturbed, they are upset, they talk to us every day—do we know anything, kind of thing. We have tried to keep them informed, but there is no question that they are upset about the potential of Brant ceasing to operate in the way it operates today.

**Mrs Y. O'Neill:** They do not see a lot of alternatives within their own community for employment. Is that what you are saying?

**Dr H. Knoepfli:** I cannot answer that for them, to be honest with you. I do not think they have at this point chosen to look.

**The Acting Chair (Mr Mahoney):** Thank you very much, and thank you for your very comprehensive presentation.

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#### RESSEL DAY NURSERY SCHOOL

**The Acting Chair (Mr Mahoney):** We have a final presenter this morning, Ressel Day Nursery School. I should tell members that the schedule originally had us coming back at 2 o'clock this afternoon, and it will be 1:40 pm when the Association for Early Childhood Education, who were unable to be here yesterday, will present. We have allowed 20 minutes for your presentation including questions. We would appreciate your introducing yourself for the purposes of Hansard.

**Mr Ressel:** Thank you very much, Mr Chairman. My name is Greg Ressel, and this is my sister, Mariola McGinn. We are from Burlington, Ontario.

**Ms McGinn:** My name is Mariola McGinn. I am a certified early childhood educator, and I am the supervisor of Ressel Day Nursery School in Burlington, Ontario. This private day care centre is licensed for 192 spaces, employing 40 people, and offering a full range of child care services, including programs for children with special needs, infant care, after-school programs for school-age children and bus transportation. These services are not offered by many other centres.

Ressel's, as the school is fondly known in the community, has served Burlington for over 30 years. I personally have worked there since 1968. The school was founded by my mother, Jolanta Ressel, in 1962, to meet the needs of the community. There were no centre-based child care facilities in Burlington at that time. Friends and neighbours who knew my mother's child care experiences in her homeland of Poland encouraged her to meet the needs. My mother responded to that need, and still works at the centre today.

Over the years our school has grown. What exists today is a product of much effort, sacrifice, struggle, investment, joy and vision on the part of my parents, myself and all the teachers and parents in the community.

Over these 30 years a lot has happened. My children grew up in the centre and so did my brothers, as well as the children of probably thousands of families in the community. A number of our kids who went to the school as small children have returned to become staff members or use the facility for their children.

The school has always had a non-provisional licence. We have always had an excellent rating from inspectors from the provincial, regional and municipal authorities. We have never had a complaint about our care of the children or quality of our program. I have attached copies of provincial ministry inspections for the past seven years, for you to see what they had to say. I would like to read a few of the comments to you:

"Excellent program, children very involved, happy and busy—October 1987.

Impressive program. Staff commitment to children and program evident—March 1990. This is a wonderful, nurturing preschool program. Each individual is shown mutual respect. Hugs are given freely. Children are spontaneous and staff responds to children's cues. This is certainly a child-centred learning program—June 1990."

I think our school is very successful when you look at these accomplishments, and one of the main reasons is that my mother and I love children and we have been able to staff our centre with people who share our dedication and love for them.

In 1985 my mother was honoured by the Halton branch of the Association of Early Childhood Education of Ontario as the recipient of the Children's Services Award for her accomplishments and excellence in the field.

Our provincial government has clearly said that it favours non-profit centres for delivery of child care over commercial centres like ourselves. Affordability, accountability and accessibility have been cited as reasons. Quality has also been suggested as one of the reasons.

I have heard that it is the intention of our provincial government to have a system of child care delivery that does not include the private centre. I feel our government is saying that we are offering substandard services. That really hurts after all the years of excellent service. After the years of praise from the same ministry, our excellent program is now substandard. I cannot believe this is actually happening.

The non-profit and private sector must meet the same standard as set by the ministry. They are inspected and



monitored by the same ministry and they employ staff trained by the same colleges.

Our centres are affordable and in fact meet quite competitive prices. We are accountable. We are accountable to the community which has been demonstrated over 30 years of service. We also meet all the same inspections and reporting requirements for non-profit centres. And we are accessible: Our centre offers child care services that are broader than most. I feel that the government has wrongly attacked our school and its staff personally and made us feel that we are doing something wrong.

Why would the government allow a \$5,000 difference to exist in the direct funding of staff wages to favour the non-profit staff over the staff who work at our centre? That has hurt the staff financially, but it has forced private centres to raise their fees and become less competitive. It has had a terribly demoralizing effect on the staff of our centre. The staff turnover has increased and finding good teachers has become more and more difficult.

If this policy is followed with further disincentives for our centres, our centre will cease to exist. My mother and I will be out of work and our staff will jump ship to a non-profit centre. They will lose an average of 10 years of seniority and their benefits. Burlington will lose a highly regarded child care centre, but the need for our service will still exist and our community will have to duplicate in the non-profit sector what my mother and I have built over 30 years, this time with public funds.

**Mr Ressel:** There is one point that I would like to add to what my sister has said. The trend of converting or replacing private centres like ours already exists. Last year, the government paid \$725,000 as a capital grant to a private centre in Burlington, which was licensed for 47 spaces, to convert it to a non-profit centre with 63 spaces. That was at a cost of \$12,000 per space.

Today's estimates on replacement of lost child care spaces is about \$18,000 per space. If our school closes, the cost to this government of replacing the 192 spaces would be approximately \$3.5 million. Halton region is preparing to cut 75 subsidized spaces from its current year's budget because of lack of funds. The interest alone on the \$3.5 million that it would cost to replace our school would provide an additional 58 subsidized spaces each year.

By opting for the most cost-effective provision of child care services through centres like our school, the government would be maximizing the families provided for. Thank you very much for listening.

1220

**Mr Bisson:** On the part of this committee, I want to thank you for your presentation because I really think you got to the crux of the problem. The crux of the problem that I see is around the whole question of conversion. I think you have come at this in a fairly candid way, putting forward your concerns and putting forward the type of things you want to see.

The discussion we have been having with people in the commercial day care sector in northern Ontario is exactly that: If we are going to go to the public sector in regard to day care, and that is where the policy is going, how can we

make that transition in such a way that is fair for both the owners and the public purse? In any negotiations, whether it be in the private sector or within the greater public sector, the seller wants more money and the buyer wants to pay less, and that is part of the negotiations. You will see that in the private sector in the same way that you will see in this one. Hopefully we can address those questions.

What the ministry is saying is, "Listen, the \$1,000 that is out there as a number is a benchmark and we recognize there are some issues that have to be addressed in regard to the negotiations." What is happening is, it has become an ideological battle and we are somehow losing the reality in the fray of the ideological battle. I appreciate the way you have come at this in coming to the point.

You say in your brief that this whole discussion that has been going on for some 10 years now—because this is not a new issue; this whole question of favouring the non-profit sector has been going on for some 10 years. It started under the Conservative government, it was carried through the Liberal government and we are carrying on with it. It has obviously had an effect on you as an owner, possibly on your staff and possibly on the parents and the children. Somehow or other we have to find some way of dealing with this so that we can finally get on with the business, which is delivery in the day care sector.

I want to read to you something I got from an owner of a private day care centre. I think he hits a point. He says:

"For several years this province has had very wishy-washy policies with respect to private sector involvement in day care. Within two months of becoming minister, Marion Boyd has made a very definitive policy statement.... We are pleased that she has ended the uncertainty for us and we will accept the direction that she has chosen to follow.

"For the first time there will be a mechanism whereby existing privately owned centres can convert to non-profit status. In my discussion with Mrs Boyd I raised the following concerns:"—which you raise in your brief.

"1. That there would be no degradation of quality of care being provided"—in other words, the same quality of care and hopefully enhanced care can happen through the conversion. "2. That the existing employees would be continued in the new entity"—so that your employees can stay in place in order to make sure that they have employment once it becomes non-profit, if you choose to do that. "3. That the personal equity that," this particular person mentioned in the letter, "and I have in our business would be protected." In other words, how much do I get for it?

"In conclusion, we see no immediate change in the day-to-day operation of" this particular centre. "We are pleased that the ministry finally has some real policies. We hope that there will be an end to the conflict between the private sector and the non-profit sector. Certainly our stress level has been significantly reduced. If the government comes up with a fair value for conversion"—and that is the key—"we will work with Mrs Boyd and her ministry" in order to come to a speedy conclusion.

If we are able to get to a conversion policy that is fair for you and fair for us, the purchaser, do you think we can deal with this issue in the broader context to make that



transition a heck of a lot easier, because the reality is that most people in the private sector are not making a buck with their centres and a lot of them are not even making a wage.

**The Acting Chair (Mrs Y. O'Neill):** That is an awful long preamble, Mr Bisson.

**Mr Bisson:** I realize that.

**The Acting Chair (Mrs Y. O'Neill):** Would you like to respond, please?

**Mr Bisson:** The question is, if we can get to a fair conversion policy, would that address your problem?

**The Acting Chair (Mrs Y. O'Neill):** I think you asked the question, Mr Bisson.

**Mr Jackson:** On a point of order, Madam Chair: I would like to have the name of the operator who has just been extensively quoted in the Hansard for the record before we answer the question.

**Mr Bisson:** As a politician, I know not to use a name unless I get permission. I need permission.

**Mr Jackson:** That is crap. You and I both know that is crap. I have asked. I made a request.

Interjections.

**The Acting Chair (Mrs Y. O'Neill):** I think this should be settled, but not at this time. We are in the middle of a question/answer.

**Mr Perruzza:** Madam Chair, is that a legitimate point of order?

**Mr Jackson:** Yes, it is.

**The Acting Chair (Mrs Y. O'Neill):** It is.

**Mr Jackson:** It is a request to have the—

**The Acting Chair (Mrs Y. O'Neill):** That is a legitimate point of order.

**Mr Jackson:** He quoted directly, and he said that. You better—

**Mr Bisson:** Okay, quiet. Let's get on with the answer.

**The Acting Chair (Mrs Y. O'Neill):** Would I be able to consult with the clerk after this presenter?

**Mr Bisson:** Yes.

**The Acting Chair (Mrs Y. O'Neill):** Please answer, if you would like to.

**Mr Ressel:** If I can remember the question.

**Mr Bisson:** The question is on conversion, if we can come to a good conversion policy.

**The Acting Chair (Mrs Y. O'Neill):** That is the third time you have placed the question.

**Mr Ressel:** That certainly would satisfy my pocket, but it does not deal with some other issues. That is my answer.

**Mr Perruzza:** What are some of the other issues?

**Mr Ressel:** There are some other issues. Number one is that over the years my mother, my sister and myself have provided an excellent service to our community, and we are now put into a position where we are in some way I guess forced, in order to comply with new government

regulations or government policy, to convert to a non-profit centre.

What happens with the directors of our centre presently? Do they maintain their directorship and their administrative control in the future direction of the school, or is that handed to someone? Do they still have work? And philosophically, should our government be providing every single service the government currently purchases? Should the government be providing also, I do not know, non-profit roadbuilding companies? It carries on and on, does it not?

**The Acting Chair (Mrs Y. O'Neill):** Thank you, Mr Ressel. I think you have expressed your opinion. We are supposed to be keeping this to three minutes but that took five, so I think it is only fair that the other parties have five, if they want.

**Ms Poole:** I found it quite interesting that Mr Bisson did quote extensively from a private day care operator who was very pleased to see Marion Boyd's direction. That is certainly the only one I have heard who has made that comment, and I would very much appreciate following up on Mr Jackson's point of getting the name of that particular operator. I think it is only fair under the circumstances.

**The Acting Chair (Mrs Y. O'Neill):** I have consulted with the clerk. There is no obligation to provide the name.

**Ms Poole:** I would request that Mr Bisson do so.

**Mr Bisson:** I can provide the name.

**The Acting Chair (Mrs Y. O'Neill):** All right, you are volunteering. Please do that this afternoon.

**Ms Poole:** The issue of fair reimbursement by the government has just come up. The details have been extremely sketchy because the government did not really have a plan or a strategy in place. They cannot give us the answers as to what the reimbursement will be. The current information we have is that you would be reimbursed for used toys and equipment. There has been no mention of any reimbursement for your investment, the cost of the land or the building. There have been no guarantees that the workers will be rehired should you convert. There has been no guarantee that seniority and benefits and salary will be transferred from the private sector to the non-profit sector.

Is it your estimation that if the government is to come up with a conversion plan that would be acceptable to the private sector, these issues would have to be addressed?

**Mr Ressel:** I certainly agree with that.

**Ms Poole:** Is there concern among your staff? I assume you are getting a direct operating grant right now where you get 50% of the salary enhancement for your staff.

**Mr Ressel:** That is correct.

**Ms Poole:** So at this stage there is already a gap. Have your staff expressed to you difficulty in continuing when the government's plan is to only give any new wage enhancements to the non-profit sector? Do you think there is going to be considerable staff turnover?

**Mr Ressel:** We have already experienced that. There has been a real demoralization. We spend a lot more time with our staff hand-holding, and that detracts from some of

the other things we should be doing dealing with the children, the care of the children, the programs and the business part of it also. That, to me, is a difficulty.

Uncertainty is a terrible thing. Staff are in our office all the time asking: "What is happening? What have you heard?" We really do not know. We are not experts at this part of it. We are not experts at tracking exactly what our government is doing. We are experts at caring for children. That is all we know. In fact, we are not very good public speakers either. However, there comes a point at which time you have to say enough is enough. We have to know.

Uncertainty has become a problem, yes, and staff have asked me why they should not go to a non-profit centre and earn over \$5,000 more. I cannot answer that. I said: "Well, you're right. If I had to advise you personally, you should go. That's better for you personally." But the government should not create a situation that makes it necessary for people to do that. It should not create a situation where my mother's work gets plundered, for lack of a better word.

You are right; if that can be straightened out, personally I would be satisfied. My mother would get her money out of it and that is it. But as an individual, I cannot agree that would be the right thing—the same with our staff. That is a certainty. It is affecting the quality of our centre.

**Ms Poole:** I am not personally very optimistic that you are going to get that offer anyway. I would not lose a lot of sleep counting the money you would get from the government.

**Mr Jackson:** On that point, the minister and the coalition have made it abundantly clear that there will be no compensation other than your used equipment. That is it. They are not even talking about your transportation sys-

tem, since I know both your centre and Brant Children's Centre provide busing services at considerable expense. I have talked to your mother about that and about the insurance costs and liability matters that she personally undertook all her adult life pretty well, and other things.

This really is expropriation without compensation in its worst form. I know your mother. She did not want to come here because she would be referencing the situation she left behind the Iron Curtain, which now seems to be revisiting her at this late stage of her life. I know how emotional she feels about that. You may want to comment on that for her personally on the record, but I know that the circumstances she left behind the Iron Curtain have now revisited her and she is deeply distressed by it. This is not why she came to Canada.

**Mr Ressel:** Certainly. We were all born in Poland actually. We arrived here in 1959, and one of the reasons was there really was no choice where we came from. I remember a number of years ago my mother got a traffic ticket for turning left on a red light or something, and she became quite upset. I said: "Well, it's only a ticket. It's \$30. We'll take care of it." However, she thought that was a flashback of what she was used to. I have talked to her extensively about this, and this approaches that in her mind. It is very real and it is very upsetting. I am upset by it too. Quite frankly, it is not right.

**Mr Jackson:** I wanted to leave on that note because I know how deeply upset your mother is about all of this.

**The Acting Chair (Mrs Y. O'Neill):** Thank you, Mr Ressel and Ms McGinn, for closing off our morning. This committee is adjourned until 1:40.

The committee recessed at 1232.



## AFTERNOON SITTING

The committee resumed at 1346.

ASSOCIATION FOR EARLY  
CHILDHOOD EDUCATION, ONTARIO

**The Acting Chair (Mrs Y. O'Neill):** Ms Russell, would you please come forward, we are going to begin. We have warned everyone that we wanted to hear you and get you on record and we want to be able to do that without dislodging too much of this afternoon. So if you would please begin. You represent the Association for Early Childhood Education, Ontario, I understand. Do you have a brief to present in writing?

**Ms Russell:** I have given someone a copy of some reference material I am going to make some reference to during my presentation, but basically I am doing this verbally.

**The Acting Chair (Mrs Y. O'Neill):** That is fine. It will all be recorded in Hansard in any case.

**Ms Russell:** First of all, I thank you for the opportunity to appear, particularly when it has meant the cutting short of your lunch break. My name is Lesley Russell. I am an early childhood educator, graduating from Mohawk College in Hamilton, the class commencing in 1967. That seems a stunning amount of time ago.

I have worked in child care mainly in the Hamilton-Wentworth area, although I did do some work here in the city of Toronto through the planning department in development work. My practical and front-line experience has been something in the neighbourhood of 20 years working in non-profit child care in the Hamilton area.

I have been an active member of the AECEO, serving both on the local branch and the provincial board of directors, and was a member of the public policy committee of the association when the policies I am going to be describing to you were developed in the latter part of the 1980s.

Although I am not working in child care any longer, I still am involved as a board member of the umbrella child and family centres, which operate the programs in the board of education in Hamilton and also the board of the Hamilton public library workplace child care. Anyone who has worked in child care to any extent will tell you it is very hard to keep yourself away from it once you have been captured by a lot of the issues.

In terms of the association, we have 2,200 members across Ontario, most of whom are early childhood education professionals. Our organization has been in existence since 1950, so we are 41 years old at the moment and soon to be 42. Throughout all of those years a concern of the association, a sort of dual concern very much tied with one another, has been both the quality of care in education for young children as well as a strong commitment from the association about the wages and working conditions of early childhood educators working in the field of child care.

The question of commercial child care has been a very difficult one for the association. It has been a struggle initially not on top of the table, a sort of behind-the-scenes

struggle, and in a sense the association really avoided taking any sort of position about the question until about the middle of the 1980s. There were very strong feelings within the organization both pro and con commercial child care.

But during the 1980s there were a number of things which occurred which really forced our organization to take a position. Those included, chronologically, a statement early in the 1980s through the then Conservative Minister of Community and Social Services about the government intention of the day to move child care from welfare to a basic public service. That was really a landmark statement at the time. Unfortunately it did not move very much further than a public statement. Subsequent to that, the minority government in the accord between the New Democratic Party and the Liberals made another statement about child care being a basic public service and not a form of welfare.

When the Liberal government, the prior government, was in power as well, the New Directions paper from the then minister, Mr Sweeney, took again another stand about the question of non-profit child care, about the initiative of the government to encourage the development of non-profit care, and talked as well about the issue of conversion, the changing of the auspices of a centre from commercial to non-profit. Again, an initiative was discussed and, in a very small measure, implemented to bring about some conversions.

Other things that affected us during the 1980s were a number of studies, both national and a local one that I will refer to, which looked at questions of wages and working conditions of staff in child care programs and questions of quality. That, combined with the paper I left with the clerk, really put the association in a position where, when there were discussions of the policy direction of government, there was an expectation that our organization would respond. The commercial non-profit question was always there and the organization reached a point where it really had to take a position.

I will refer to the study I have left for your information. I brought it today, though it is somewhat ancient history, because I think it is an interesting look at what the situation was like prior to the introduction of the direct operating grant, prior to the introduction of the wage enhancement grant, where there was more or less a level playing field for commercial and non-profit centres. So it really gave us a base to look at and as well was very consistent with other major studies that were done at the time on wages and working conditions for staff.

I will just highlight a couple of things for you. Part of the impetus for the doing of this study was an American study which identified issues of quality in child care programs. It looked at three factors—size of group for children, staff training and staff turnover—as being very clearly connected to measures of quality in child care. In addition to that, as people experienced in working with young children we also had a sense that things like staff



morale, staff-child ratios, stress, burnout, job satisfaction and so on would have an effect on the kind of care children were receiving in programs in our local community in Hamilton-Wentworth.

So we undertook the study in which we surveyed all of the licensed programs in the Hamilton-Wentworth area and specifically all of the staff members within those programs. We had a fairly good response rate: 177 surveys out of, I guess, about 200-and-something sent out. So we felt quite satisfied that what we were hearing was reasonably accurate. As I say, it was echoed in larger studies that were done across the country.

Some of the things I will just mention. In the area of experience and turnover, in non-profit centres staff had an average of six years of experience; in commercial centres, three and a half years. So there was a difference there.

In terms of their turnover with the present employer, it was three and a half years on average in non-profit centres and two years in commercial programs. We looked at rates of pay. The average rate of pay at that time, as I say, prior to the introduction of direct operating grants and other enhancements, was \$7.61 an hour for non-profit programs and \$5.49 an hour in commercial centres.

So we saw two factors, really, that were positive in the area of turnover experience and wages which were consistent with non-profit status and to some extent unionization of programs. In commercial sectors we found that those categories were not as positive.

We looked at benefits. For example, 62% of staff in commercial centres reported no paid sick benefit; only 14% in non-profits had no paid sick leave. Paid professional development: 16% of staff in commercial centres had professional development; 55.7% in non-profit had paid professional development.

These are the kinds of things that in our view were contributing both to staff contentment, satisfaction and so on and also to quality impacts on the children, generally in relation to benefits counted one, one, one for each benefit. In commercial centres, staff received an average of 2.7 benefits compared to 5.9 or almost six benefits in non-profit programs. There again, non-profit status and unionization were positive factors.

We looked at other things, like the amount of time involved in program planning, professional development activities, membership in the professional association. In all of these areas we found non-profit status to be very much a significantly positive factor for staff in those programs. That included feelings about the job, satisfaction with pay levels and so on. So I refer you to the study if you have a little interest in what might be termed, I suppose, a bit of ancient history, but it is an interesting base to look at when we try to examine the conditions that existed in commercial and non-profit programs before there were other factors involved.

This study and other sorts of policy initiatives from the government really left the association with only two choices: We could continue to remain silent about the issue or we could take a position. More and more, both within the membership and within the board of the organization, there was pressure and inclination to take a position. It was

a great struggle, but in 1987 at its annual conference the organization did pass a resolution which basically supported the government position of the day—that is, the position in the New

Directions paper, which Minister Sweeney was responsible for and which talked about new funding to non-profit centres, conversion of existing commercial programs and certainly the encouragement of the development of a non-profit system.

Since that time we have urged as an organization both the previous government and the current government to proceed on the initiative to convert commercial centres to non-profit. The position of the association was confirmed as recently as the spring of 1991. I believe we have every intention to continue to urge the government to proceed on the question of non-profit conversion, because we see it as a really positive step, both in relation to the quality of care of children and also in relation to the kind of working conditions that staff experience in their day-to-day working programs.

I have to make it really clear that this is not a question of the Association for Early Childhood Education opposing commercial centres in terms of their existence. What we have talked about always is the question of public funding. We really feel the issue of public funding is the one we confine ourselves to in relation to non-profit programs: public funding should be going to non-profit programs, community-based programs, publicly accountable programs, so that there is accountability for the public funds that are spent there.

If child care is going to truly move towards a basic public service, which is the stated position of all three parties at various times when they have been in government, it must be developed on the basis of a non-profit program and system. I guess what occurred to me when I was thinking about these issues is that really the question is not one of policy, in a sense. It is the fact that it is actually going to happen that seems to be difficult, because all of the parties have certainly looked at the question of public service programs in the past and have supported it.

#### 1400

Those of us who from the early part of the 1980s have supported a move towards a basic public service and have participated in what has seemed like endless discussions about the who, why, when and the how much, really feel very positive that it appears something is finally going to happen which will propel child care a bit further along the road to a more progressive kind of system.

I suppose we feel we have been sitting on the on ramp for a really long time, talking about whether or not we were going to proceed on the journey. Now that the traffic is moving, some are hesitating and wavering about whether they really want to go. I am here today to tell you that the association has had its bags packed and has been ready to go for quite some time and we encourage and applaud the move to make a journey in what we see as a positive direction.

We are a very patient group of people. You have to be to work with little children. We look on the positive side of things and we are caring, skilled, experienced and very



committed to our profession. We have struggled—and it has been extremely difficult—through a very painful process of coming to what we see as a principled decision on the question of non-profit child care.

It was not easy and many people have strong interest in maintaining commercial programs and having enriched government funding. Some of them have been very angry, but the organization felt it had to be done. In a way, politicians are having to face the same struggle we had and it is not a very pretty one. But I believe that if you support child care and believe it has to move towards a public service, then the position is very clear.

We have no evidence that a basic public service can be developed when it is left to the forces of the marketplace, the entrepreneurial commercial forces in the community. No public service has been developed in that fashion.

We are really urging you to take a positive view of this initiative. It has the potential to really improve the quality of service to children and their families and to have a really positive impact on the staff who work in these programs. I am ready and prepared to answer any questions you may have about our position.

**The Chair:** Thank you. Mr Jackson.

**Ms Poole:** I think Mr Bisson finished last.

Interjection.

**The Chair:** You were the last? Then Ms Poole, for a minute.

**Ms Poole:** Thank you for your presentation, Lesley. You said the association supported Mr Sweeney's 1987 announcement and you reaffirmed that in the spring of 1991, as to the expansion of non-profit.

There is one very real difference between that announcement and what the current government is doing. Mr Sweeney had said they did not intend to buy out the commercial sector and would continue to support existing commercial sectors. What this announcement has said is that for commercial sectors there will be no new wage enhancement and, particularly in view of your 1986 report, I think this is quite important. Second, there would be no new subsidies for commercial centres.

Given the fact that I think your association represents both private and non-profit ECEs, are you and your association going to be taking a very strong stand with the government in protecting workers' rights to guaranteed employment, protecting workers' seniority and benefits if there is conversion? So far we have heard nothing about those protections for workers whether conversion takes place or not.

**Ms Russell:** I have to make it really clear that the organization has members who work in both non-profit and commercial centres. There is a little bit of a difference between purporting to represent the interests of commercial programs and the interests of staff who work in commercial programs. I will make it clear that we are talking about staff.

**Mr Mahoney:** Where are they going to work if there are no commercial programs? That is the question.

**Ms Russell:** What we are saying is that—

**Mr White:** Only one question was allowed, Mr Chair.

**The Chair:** Yes, the second question was not allowed.

**Mr Mahoney:** You can answer it anyway.

**Ms Russell:** We would certainly be very interested in participating, and in fact I believe one of the members of our executive is participating in discussions about the process of conversion.

What we are talking about, in terms of the position the association has taken, is a position of principle and the detail of it we would like to participate in. Of course we want to look at workers' seniority, continuity of jobs and continuity of care for children and so on, but the point at which we begin the discussion is that we support non-profit child care. So things develop from that position that make sense in relation to the support we have decided on.

**Mr Jackson:** Good to see you again.

**Ms Russell:** Nice to see you as well.

**Mr Jackson:** The press statement the association issued January 31, 1991, that I have in front of me indicated, and I will quote directly from it: "We are very concerned about a significant number of professionals who will be excluded from receiving the recently announced down payment on pay equity because of their place of work. The association urges the government to re-examine the criteria for eligibility, to make the necessary adjustments so that all early childhood educators benefit significantly from this recent funding initiative and from future improvements in pay equity legislation." Do you still stand by that press release?

**Ms Russell:** I believe the statement you are referring to was subsequent to Ms Akande's announcement in the beginning of 1991.

**Mr Jackson:** That is right.

**Ms Russell:** Since that time the executive of the organization and the board subsequently met as well and discussed the situation. The position we are taking is certainly that we want to see pay equity adjustments within the sector, but there are two things we would look at: One is the question of conversion, which we see as critically important to enable the public funding that would go towards those kinds of things to be addressed in the direction we think it should be.

**Mr Jackson:** If I may, since I only have a minute, I wanted to ask you—

**The Chair:** You have used it. Mr Ward.

**Mr B. Ward:** I appreciate your presentation, Lesley. Just to recap for my own benefit and for the record, your organization is 42 years old and has 2,200 members representing the ECE sector, so to speak.

**Ms Russell:** Those who belong. There are more early childhood educators in the province.

**Mr B. Ward:** This is a very emotional issue, I guess, if you are an owner-operator and if you really believe in non-profit, but after your organization analysed this situation, this issue, in an impartial manner—I am assuming you did not have a position.

**Ms Russell:** Not at that time, no.



**Mr B. Ward:** You looked at all the information available and agreed that if public funding is used and child care becomes a public policy, it should be channelled into the non-profit sector. Is that correct?

**Ms Russell:** That is correct, yes, and I have to emphasize that prior to 1987 the organization did not have a policy about public funding initiatives going to non-profit. It was subsequent to 1987 and the New Directions paper that that policy was developed.

**Ms Poole:** They supported our policy, Mr Ward.

**Ms Russell:** The organization is on record as supporting the current policy initiatives as well.

Interjections.

**The Chair:** Order. Thank you very much for taking the time to appear before the committee today.

**Ms Russell:** It was a privilege, thank you.

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GILLIAN DOHERTY

**The Chair:** Our next presentation will be from Gillian Doherty. Good afternoon. The committee has allocated 20 minutes for your presentation. We always appreciate it if you could reserve some of that time for questions and answers with the members. If you will introduce yourself for the purposes of Hansard, you may begin.

**Dr Doherty:** Thank you. I will try to confine myself to 20 minutes. My name is Gillian Doherty. I have a PhD in child psychology. For the past 11 years I have been operating a private practice in applied research and consulting. I presume I was asked to come to this committee today because I did some work for the Ministry of Community and Social Services that included specifically looking at the differences between profit and non-profit child care.

Unlike the previous speaker, I have no background in child care, so the fact that I was asked to do this particular piece of work for the government was based on the government wanting an objective person who had no previous involvement with child care but who did have the ability to read the research literature very critically and draw conclusions; to look at the issue. My qualifications were my ability to read research literature, not that I knew anything about child care at the time I did this work.

I have tabled with the clerk a paper that is basically what my presentation will be. The paper will give you the relevant citations and bibliography. In doing the presentation I would like to just hit the highlights and not keep interrupting to cite so-and-so, such-and-such a date.

I would like to start with a definition of what quality in child care is, because this gives a perspective for looking at the research. The definition I am proposing, which is very close to the definition I used when I did the project for the ministry, is twofold: that quality child care both supports and assists the child's wellbeing and the child's development—social development, emotional, physical, intellectual, linguistic—and second, that quality child care supports the family in the child care and child-rearing function. There are two aspects, but the emphasis is on the enhancement of the child's wellbeing and development

and the enhancement of the family's ability to look after that child.

The collection of studies I am going to talk about includes six studies done in Canada and six done in the United States. I will make reference to two subsequent, fairly large studies that have not actually been published yet. As it happens, their preliminary data indicate exactly the same trend as the 12 studies I will talk about.

On the basis of the 12 studies, it appears that quality is more likely to be found in non-profit than for-profit centres. I would like to put an emphasis on "more likely," because I am aware, and I am sure you are, that there are some very good for-profit and there are some abysmal non-profit. But when a government is trying to develop policy it has to look at an aggregate, not centre by centre.

Having said that, there are various methodologies used to look at the issue of the impact of auspices. I have grouped the studies under those different methodologies. I will briefly define what the methodology is, then the findings of the study.

The first approach that is often used is to evaluate a centre as high-quality or low-quality, using the sort of definition I have already cited, on the basis of a group of factors that have already been proven in the literature to be associated with child wellbeing and/or development; things like the number of children per care giver, the appropriateness of the activities being done with the child, or what is called a global measure. One is very well known, the early childhood environment rating scale, which is well validated and has high interrater reliability. That is also used.

The studies that have used the approach of a global or summary measure include a Canada-wide study involving 927 centres; five relatively small US studies, but which, among them, involve 304 centres in six different jurisdictions, and a fairly large study involving 439 centres. The findings I am going to give you involve several jurisdictions—which is an important point because the findings keep on being the same regardless of the jurisdiction—and a significantly large number of centres.

Basically what these studies find is that on things like enhancement of the child's developmental skills, a global rating of quality, for example, on the early environmental rating scale, the types of characteristics, such as care-giver-to-child ratio and care giver behaviour, such as being encouraging with the children and using appropriate limit-setting, are all statistically more likely to be found in non-profit than for-profit. What these studies are saying is that there is a statistically significant difference—ie, a difference that is not simply by chance—between profit and non-profit in favour of the non-profit in things that impact very directly on the child's wellbeing and/or development.

The second approach that has been used in looking at this issue is to focus in on particular characteristics of the care giver behaviour or characteristics of the setting that in other studies have been demonstrated to impact on child wellbeing or development and then to look at the extent to which non-profit versus for-profit centres have the characteristics associated with positive outcome as opposed to negative outcome.



I am now going to go into three subissues. One of the factors associated with child wellbeing is that the care giver not have too many children to look after. It is called the care-giver-to-child ratio. Studies that have looked at that have found that where there is a relatively small number of children per care giver, the care givers are much more likely to be responsive, to be sensitive, to be appropriate in the way they program for the children. When there is a large number of children per care giver, there are more incidents of children being exposed to risk, care givers are much more controlling and much more harsh and much less likely to engage in behaviour that will enhance the child's development.

One Ontario study and two Quebec studies have specifically looked at this issue of child-to-care-giver ratio. They all consistently found that for-profit centres were more likely to be in violation of appropriate care-giver-to-child ratios than were non-profit. In a large US study that involved 227 centres, again the findings are similar. The non-profit centres as a group have fewer children per care giver than the for-profit.

The second specific characteristic associated with child outcome is staff turnover. Basically the research indicates that in situations where there is a high staff turnover, the centres tend to have lower ratings on global measurements of quality, care giver behaviour tends to be harsh and less responsive and children tend to have lower scores on language development tests.

Again, there are three Canadian studies that have looked at this issue, one of which was done in Quebec and involved all the child care centres in that province, so it is a substantially large number. Again, the three Canadian studies are consistent, that for-profit centres have higher turnover rates than non-profit centres. Two studies in the US, one of them involving 227 centres, found exactly the same thing, a tendency for higher turnover in the for-profit centres, and as I have indicated, high turnover is not a good thing.

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The third specific indicator is adult work environment, and it is not surprising that there is a fair amount in the literature that has shown statistically that factors such as care givers' salary and the provision of paid preparation time during the workday have a direct impact on the way in which the care giver interacts with the child, the degree of sensitivity, responsiveness versus harshness and controlling, and not surprisingly, a direct impact on job satisfaction. Job satisfaction in turn has a direct impact on whether there are high turnover rates. It is not as circular as it sounds.

There is a Canada-wide study, 927 centres, that found non-profit is much more likely to have high turnover than—sorry, I have my cards out of order—I will back-track.

Turnover rates: There is a consistency in both the US and the Canadian studies that the turnover rates are higher in the for-profit than the non-profit.

**Mr Bisson:** Is that staff?

**Dr Doherty:** This is front-line care giver turnover rates, and as I have indicated, that has a direct impact on the type of interaction between care giver and child and the children's developmental levels.

Another aspect that has been looked at is child wellbeing per se. There was a 227-centre study done in the United States which found that, consistently, children in non-profit centres were more attached to their care givers and therefore more relaxed with them, had higher developmental levels of peer play and obtained higher scores on language skill tests than did their peers in centres which were for-profit.

A fourth approach is compliance with regulations, whether they be provincial or state. Two Canadian studies, one done in Ontario, one province-wide, which between them involved about 1,400 centres, have found again that the non-profit centre is more inclined to be in compliance or to actually exceed compliance than the for-profit. For example, in a study done here in Toronto with 431 centres, only 13% of the for-profit centres had a clear licence versus 39% of non-profit with a parent or community board. In the United States, a study done in Pennsylvania also found that non-profit programs are much more likely to be in compliance with state regulations than the for-profit programs, and it should be noted that Pennsylvania has some of the most stringent regulations in the US.

Last, I would like to just touch on the number of formal complaints lodged against a centre. Here there are two studies I would like to reference, one done in Ontario, one done in Quebec. Again, they both found that the for-profit centres had more complaints lodged against them that appeared to be valid complaints than did the non-profit, and in both situations, the for-profits had a higher proportion of the complaints involving care-giver-to-child ratio than was the situation for the non-profits, and you will remember I tried to quickly stress the importance of care-giver-to-child ratio.

One of the suggestions that has been frequently made and I think will be even more frequently made now that the government is moving in the direction it is, is to say that the difference in quality which the research literature clearly shows, with the non-profit tending to have higher quality on various indicators, is simply the result of the fact that for-profit centres do not get government subsidy, the idea being that if the for-profits got government subsidy, then this difference in quality would be wiped out. That assertion is not proven by the research.

One of the studies that first made this suggestion was conducted by SPR Associates in 1986. At the time SPR Associates did its study, some provinces were providing subsidy for for-profit as well as non-profit; other provinces were not providing subsidy for the for-profit centres. SPR Associates produced a statistic which suggested that the difference in quality, which they were not arguing about, is there, but it is caused less by auspices than by whether or not there is government subsidy. However, when trying to support this conclusion, SPR presented its data with all the provinces aggregated, ignoring the fact that some provinces subsidized both types and other provinces did not. The conclusion made by SPR Associates would only have



been supported if it had been able to demonstrate by separating out the provinces that the difference in quality that they found between profit and non-profit only occurred in those provinces where subsidization was only available to the non-profit sector. What I am suggesting is that SPR's conclusion is not supported by their own data, at least the way they reported it.

Second, the findings of another Canadian study done in 1988 here in Ontario, when Ontario was still subsidizing for-profit and non-profit, still found the same difference in quality between profit and non-profit, with the non-profit showing better scores on various indicators of quality. That also suggests that it is not simply the lack of government subsidy that results in the difference in quality found between profit and non-profit.

I am aware that I am going over time. I am prepared briefly to respond to some of the criticism I have heard made about the 12 studies I have reported upon. Would you like me to do that, or would you prefer that people have an opportunity to ask questions?

**The Chair:** We have about two minutes left. We could ask questions in the normal rotation. Mr White is first, recognizing you have about 50 seconds.

**Mr White:** I am very impressed with your presentation today, Dr Doherty. In fact, I have read almost the entirety of this little missive from a year and a half ago and had deduced from that a number of different variables which I was wanting to propose to you, because of course the issue of profit versus non-profit, which seems to be the hotbed of contention at the moment, was not one of the variables you examined, or not chiefly, in your research.

As I look through your research, most of the data you cite are fairly recent pieces of research. I imagine most of the research is relatively recent, within the last 10 years or so. But the complaint has been made that while there may be some research in Metro Toronto, it does not apply to Sarnia or London, or that maybe some research from Minnesota does not necessarily apply to Ottawa. I am wondering if you could comment in that regard.

**Dr Doherty:** Yes, that is a common complaint. The conclusions about relative quality between profit and non-profit that emerge from the 12 studies I cited, and that appear to be occurring in the preliminary data of two other studies that are not yet published, are all based on other research that had shown a clear, statistically significant association between particular factors and child outcome. Furthermore, the body of research in child care internationally, whether it be Europe, New Zealand, Bermuda or North America, shows the same characteristics of care givers or settings being associated with positive or negative outcome, which to me strongly suggests that at least in countries that are based on a western European civilization, there is a common call of care-giver behaviour and program characteristics that are associated with positive child outcome. If you use those indicators to then look at the difference between profit and non-profit, I think the findings are equally applicable whether you happen to be operating a service up in Wawa or in Toronto or somewhere else.

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**Ms Poole:** Thank you very much for your presentation. One of the bases upon which the Liberal government made its decision in 1987 regarding child care was the very fact that you have brought out today, that consistently the research does show it is more likely you will have greater quality with the non-profit than with the for-profit sector child care. However, I think the point you made today is also extremely valid, that this is a generalization. There are many private sector child cares that provide superb quality child care, and there are other non-profit sector that provide, I think you used the word "abysmal" care. Instead of focusing on the commercial versus non-profit sector, if the government—

**The Chair:** We are hoping for a response.

**Ms Poole:** I am just getting to it, Mr Chair. If the government had focused instead on quality as the issue, do you have suggestions how the government could have dealt with this issue in a different way to address the quality differentiation, whether it is in non-profit or a commercial centre? I realize you said you did not have a background in child care, but from your study, were there things you would have seen that would have been preferable to bring in?

**Dr Doherty:** I could spend a whole afternoon responding to that, but I will not. Briefly, my understanding of what the government is proposing includes incentives, if you will, for the for-profit centres to get under the jurisdiction of arm's-length boards. I think that is one way of addressing the quality issue, because in the for-profit sector, there is not the same sort of responsibility to somebody other than people who have a direct financial interest in this operation.

What I am suggesting to you briefly is that it may not be obvious at first glance that the ministry is addressing quality, but I think it is, maybe in a roundabout way, through trying to encourage for-profit centres to have a proper arm's-length community board of people who do not have a financial interest in the operation. One would hope, therefore, that they are able to be more objective about care-giver-to-child ratios and salaries and things like that, all factors which do impact on the child.

**Mr Jackson:** I wanted to thank you for your presentation, Ms Doherty. I found your American references entertaining and I found your Canadian references from the mid-1980s informative. However, it must be very frustrating for you as an academic, and one who has published, when the field has changed so dramatically since the time you published, as it relates, for example, to compliance and ratios of compliance, even by the ministry's own statistics. Is the ministry working in an ongoing way with you in order to share that information, and how has that affected some of your thinking?

**Dr Doherty:** I wish I knew what you were getting at.

**Mr Jackson:** If that is a question—

**Dr Doherty:** If you are challenging the data on the basis of them being hopelessly out of date—



**Mr Jackson:** No, those are your words. I said it was informative, and I called your American references entertaining. If you think it is hopelessly out of date, that is your opinion.

**Dr Doherty:** No, I did not say that. I was reading through your attempt to be terribly tactful to ascertain that you were basically saying that the data were so out of date that they perhaps were not relevant. I see that you or the person sitting next to you has a copy of a book that was published last September.

**Mr Perruzza:** I never read it.

**Dr Doherty:** In preparing for that book, I went back and caught up on the literature as of June 1991, and I really do not think the child care field has changed so dramatically in seven or eight months that what I have suggested to you is no longer relevant.

**Mr Jackson:** It may not be in New Zealand, but it certainly is in Ontario. Thank you.

**The Chair:** Thank you, Mr Jackson, and thank you, Dr Doherty, for appearing today.

**Ms Poole:** Mr Chair, while our next witness is getting some water, I have been looking over the information that was gathered by the ministry, and quite frankly I am very disappointed.

"Question 1: A copy of any impact studies upon which the December 2, 1991, announcement was based.

"Response: The December 2, 1991, announcement was based on information gathered from MCSS staff consultation regarding impact and basic statistical information on file with the ministry."

I wanted a copy of the reports upon which they based their decision, not something telling me they have some information but that it is at the ministry. I wondered if we could ask the ministry to provide us with some more complete information in this regard.

**Mr Jackson:** I would like to echo those sentiments with three questions that I added to Ms Poole's list. I asked for specific dollar signs associated with the conversions. The list makes reference that the ministry spent \$100 on one centre. I thought I asked for all centres and the costs, and to identify them and the number of spaces.

**The Chair:** I am certain we will convey that to the ministry.

#### KATHY'S (FAMILY) HOME DAY CARE CENTRES

**The Chair:** The next presentation will be from Kathy Sarginson. Good afternoon, Mrs Sarginson. We have allotted 20 minutes to you for your presentation. We always appreciate some time for the members to discuss your presentation with you. You may introduce yourself for the purposes of Hansard and then begin.

**Mrs Sarginson:** My name is Kathy Sarginson. I am the proud, if somewhat perplexed, owner-operator of two day care centres in Belleville.

Nine years ago, I had a desire to own and operate my own centre. I brought with me a sense of independence and commitment to quality. With the help of my family for free labour, and with funds from my personal savings and

bank loans, I was able to open my first independent centre, licensed for 22 children. I insisted on early childhood education staff and held high standards for care in our area.

With sound business practices and a lot of hard work, the centre's viability propelled the operation into a growth situation. People brought their children to Kathy's Day Care because of word-of-mouth references attesting to the quality of care.

Four years later, the demand for my service had grown to the point where expansion presented itself as a responsible business choice, so I increased the mortgage on our home and used my husband's savings earned elsewhere to make the down payment on my second centre with spaces for 24 more children.

Things were going about as well as they possibly could and I felt proud to have accomplished what I had without any government assistance. I was independent and loved it. Further to the sensation of accomplishment and success was the joy of knowing that, incidental to providing a fine service, I also created employment for 11 people, all women, who paid taxes and helped the economy. I felt great. I was doing my part as a Canadian, I was contributing, and if my plan had continued as it was laid, I would be justly rewarded with an investment return upon my retirement, money to pay off my debts and for my retirement income.

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It was at this point in 1987 that the government, in a well-intentioned but misguided attempt to raise day care teachers' salaries, introduced the DOG, a pay enhancement scheme under the misnomer "direct operating grant." While teachers in non-profit centres enjoyed 100% of the available grant, teachers in independent centres were discriminated against and allowed only 48% of the grant.

Because of my sound business management, my employees already earned higher wages than the private non-profit centres. The DOG only served as a vehicle through which teachers in independent centres felt discriminated against. In some cases, however, valued and experienced employees were lost to centres that received additional funding as well as the direct operating grant. Two examples are the Loyalist College centre and our unionized municipal centre. The difference between the wage they offered and the wage I could afford to pay was insurmountable, short of raising the fees through the roof.

The exodus continued and I felt taken advantage of as a staff training ground—four employees in one year to the newly created college day care. Incidentally, they only employ seven employees, three of whom were obtained from the Toronto area. There are 30 non-profit centres in my area from which they could have chosen their employees.

Where once a high level of expertise and experience had been gained by my employees, they were in demand and were quickly enticed by the higher wages and the sky-is-the-limit attitude towards spending that these centres could offer, leaving me to start again and train new staff, and all at my expense as a taxpayer.

I was angry and frustrated, but this was just my first taste of a slanted sentiment which seemed to depict independent centres as shady, money-gouging setups. Then in



1991 the wage enhancement grant went solely to the non-profit sector, leaving my employees frustrated, adding insult to injury, as their child care program ranks as a high-quality program.

If my integrity can be attacked for trying to provide a first-rate, affordable service and earn a living, we have a real problem in this country. We need government to level the playing field with its day care policies, in other words, keep the non-profit sector viable but not at the expense of the independent operators.

Subsidize families in need, not the centre, thereby allowing the parents to choose the centre of their choice. The per diem rate should reflect the actual cost of operating a centre. The inherent discrimination against independent centres makes it impossible for many to stay afloat.

Close on the WEG heels, Bob Rae's NDP government showed its true socialist colours. The plan to get rid of private operators was culminating. Mr Rae revealed in dollars and cents what he was prepared to do to convert independent centres, which had stood on their own without need of assistance, into so-called non-profit centres that would definitely require funding.

All of this is based on the assumption that high quality care and public accountability exist only in a non-profit system, even though Gillian Doherty maintains, "The main component of quality care is the interaction between care giver and child."

In her document *Factors Related to Quality in Child Care: A Review of the Literature*, there are three main mechanisms for promoting and sustaining quality care: regulatory methods, voluntary standards of professional practice and other methods such as user and care giver education.

Public accountability has been researched with regard to the application of the direct operating grant, and I refer specifically to the Levy-Coughlin report. The primary reason for the direct operating grant was to increase staff salaries and benefits. You will notice an error here in my sentence but I will correct it now. Independent centres applied 99% of the direct operating grant to staff salaries and benefits.

I feel the onus should be shifted from me defending myself to the Ministry of Community and Social Services, which both sets the licensing requirements and polices these standards.

Independent centres play a vital role in the economy. To drive 650 operators and 6,500 teachers into publicly funded centres will only aid in the demise of our Ontario.

When the figures of the conversion package were made available to me, I was disgusted; I was more than angry. How could he stand there with a straight face and ask me to sell my life's business at a bargain basement price of \$1,000 per licensed space? This was an insult because generally accepted figures at fair market value for a day care in my jurisdiction are \$4,000 and more per licensed space plus real estate. Mr Rae's offer fell short of my expectations by approximately \$265,000.

If I converted, I would have to lease my buildings back to the now non-profit centre and take a back seat to its destruction. Some quick calculations also told me that if I

was fortunate enough to sell my buildings for fair market value, after having sold the spaces to Mr Rae, that I could actually make in the neighbourhood of \$65,000 less than what I would have if I had taken my money, put it in the bank and never entered business at all. As far as I and many of my colleagues are concerned, this conversion package offer is a non-option. It only served to demoralize a hardworking and productive sector of society. His offer degrades the value of my business, and the very mention of it would send any potential buyer scurrying. I do not deserve this deliberate damaging assault of ownership.

This just gives credence to my belief that all this talk about improving our economy by encouraging investment is nothing more than lipservice designed to distract Ontarians from his costly bumbblings in the business world, the same world that pays for Mr Rae's wages, expenses and mistakes. I do not believe the NDP considers the implications of its policies; they are irrational, unfair and have caused considerable upset within my business. Both teachers and parents fear the loss of the centre of their choice.

All I really want as an independent day care operator is to be left alone to conduct the business I love, unshackled by unfair government competition. I want families in need to have the choice to utilize my service. Short of that, if Ontarians really want me to convert, pay me what I am worth. It is the democratic way.

**Mr Perruzza:** I am going to be really brief. First of all, I would like to make a brief statement about this morning's exchange. I know it is uncalled for and I know that we should comport ourselves in a very businesslike and respectful way, but sometimes we get involved in cross-partisan politics and we lose sight of the really important issues that are in front of us and we all start vying for votes, our Conservative members and our Liberal members as well.

**Mr Jackson:** You are going to need a lot more than I am, pal.

**Mr Bisson:** Good shot.

**Mr Perruzza:** Perhaps, but it really is uncalled for.

Judging from some of the gloom and doom that is in your presentation and from some of the very harsh words about taking a back seat while Ontario is being destroyed.

**Mrs Sarginson:** I referred to the destruction of my buildings; that is what I took the back seat to.

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**Mr Perruzza:** Well, you talk about the demise of Ontario: "demise of our Ontario" is another way you put it. How much money did you borrow on your house to invest in this business?

**Mrs Sarginson:** How much money did I borrow on my house to go into business?

**Mr Perruzza:** Yes. You said you increased your mortgage.

**Mrs Sarginson:** I have remortgaged my house so many times I have not got an actual clear figure of how much money I have put into this business.

**Mr Perruzza:** A ballpark figure.



**Mr Jackson:** This is a legal point, and the Chair should advise that the person is in no way obligated to disclose that information.

**Mr Perruzza:** She talked about it in her presentation.

**The Chair:** Thank you, Mr Jackson. You are perfectly correct. No witness at any time is compelled to answer any questions.

**Mrs Sarginson:** Then I will, respectfully, not answer that; that is my business. I do represent a quality program. I open my books for public accountability for the direct operating grant.

**Mr Perruzza:** You talk here about having been made an offer or there will be a prospective offer and you are going to be shortchanged \$265,000.

**Mrs Sarginson:** I have a prospective buyer right now. Because of yesterday's announcement by Marion Boyd that my direct operating grant will not be transferable I have just lost \$500,000 in the sale of my two day cares. That is factual.

**Mr Jackson:** She was grandfathered.

**Mr Perruzza:** So you have lost \$500,000 as of yesterday?

**Mrs Sarginson:** That is my understanding from Marion Boyd's policy.

**Mr Perruzza:** How many years have you been in business?

**Mrs Sarginson:** I have been in business nine years as a licensed centre. I have been offering child care for 12 years. I started out as a private home day care operator with five children in my home. Because of my background, I ran a mini-day care. It just kept propelling; the quality was there.

**Mr Perruzza:** I see. So your—

**The Chair:** Thank you. Mrs O'Neill.

**Mrs Y. O'Neill:** Thank you so much for your presentation. There are so many things I would like to ask you, but you did make the statement about the conversion package. We have had very little said about the conversion package because even people who are as well informed as the Ontario Coalition for Better Child Care have said there is no plan for the conversion package. The minister herself said the whole thing is in a moratorium because there is not sufficient planning. That is a great concern to us because we have had all kinds of people talking to us about the uncertainty. You seem to have had some kind of conversion package offered to you or you have had a meeting. I wonder if you would expand on where this \$1,000 came from.

**Mrs Sarginson:** Sure. I work very closely with my community. I happen to be chairman of 30 non-profit agencies around child care planning. At our public meetings Comsoc agents have come and presented material to us in the sense that they were developing a conversion package. She did state, "which would pay up to \$1,000 per licensed space." Given that I have that information at this time, that is what I am basing my assumptions on.

**Mrs Y. O'Neill:** So you have had no individual meetings or no individual negotiations?

**Mrs Sarginson:** We have lots of individual talking back and forth, but as she has noted many, many times, I have more information at my disposal than she is receiving within her Comsoc area.

**Ms Poole:** Just to follow up on that, did the ministry give you any indication of what would happen to the actual property? Would that have to be transferred into the name of the government or would there be some future compensation?

**Mrs Sarginson:** There are a lot of discrepancies here because there is no conversion package that gives us strict guidelines. Let's say as an operator I decided I did want to convert; of course the board has the decision to hire and fire me. I do not have my thesis completed for early childhood education; therefore I am not eligible to be a director of my facility because I do not have my ECE. I am sorry, I am getting a little offtrack. Just rephrase it again for me.

**Ms Poole:** What would happen to your property?

**Mrs Sarginson:** With regard to the property, they are not in a purchase situation. They are not offering purchase of toys and equipment. If I was in a leased building, the board would then want to lease the property from me. My experience, and the reason I said "destruction," is because I feel and I see that in non-profit organizations if the manager is not there onsite, walls start to peel, buildings start to crack. I do not want to be part of that system, so it is a non-option, and they will not buy my building at fair market value.

**Mr White:** On a point or order, Mr Chairman: I think it is not totally fair to ask Mrs Sarginson, although certainly she is doing an excellent job in telling what her experience has been with Comsoc. But in terms of the policy issue, we have some people here from Comsoc who could speak to that if the committee wishes.

**The Chair:** That is not a point of order.

**Mr White:** It is available if you want it.

**Ms Poole:** They will not give it to us.

**Mrs Cunningham:** Just on that point, I think we have got our questions on record. We are looking for responses, so I will not take up any more time. The fact of the matter is, we have asked. We did not get it today; we will look forward to getting it tomorrow. That is all.

**Mr White:** I said you could have it.

**Mrs Cunningham:** Well, if you have got it, give it to us, because we are looking for it, all right?

I respect so many people who come before this committee to help us in our deliberations. This issue, we were advised by the ministry yesterday, is not an issue of quality between private and public day cares, and I hope we have left that one behind.

**Mrs Sarginson:** So do I.

**Mrs Cunningham:** It seems to be the one that many members of the public advise us on, because it has been the criticism from the government members and you have

heard it today, but the minister herself does not consider it an issue, so I would like to get on with some of the others.

The first issue is the ideology of the thing, and that is what we are facing with this government, and it admits it.

The second one would be the one the minister raised, the only other one that I could document from her presentation yesterday, with regard to parental control and input and a board of directors; that was her main concern. One of the caucuses has been asking of everybody who comes before the committee: Is there opportunity for parents? Do you have an advisory committee or a board of directors? That seemed to be minister's concern.

**Mrs Sarginson:** Back a few years ago, probably around 1987 when I really became aware that there was talk going on between non-profit and private, I put a survey out to my parents, because we did not have an advisory board, and asked them very specifically if they would like to be involved in a parent advisory board and attend meetings once a month to get involved in the operation of the centre. The overwhelming response was: "No, Kathy. You are doing what we want. We have daily contact with you. When a concern comes up, you address it immediately. If we see something wrong, we know you are open and will come forward when there is a problem and not at a monthly meeting."

I would have an advisory board if the parents desired it. To this date, they still maintain they do not want a parent advisory board.

**Mrs Cunningham:** I am finding, actually, the input that we are getting, because of the issue that we have, tremendously regressive. I have been involved in child care now for probably 20 years in Ontario, and I thought the discussion in Ontario today would be: How could we have more private home child care? What is the answer to providing more spaces in the workplace? Should we in fact be having child care in our school system for three- and four-year-olds as opposed to education? Those were the kinds of things I thought I would get into when I got elected to this seat. In the last four years, there has been no discussion on it.

**Mrs Sarginson:** I hope you will find some of my added material of interest.

**Mrs Cunningham:** I was going to compliment you on that.

**Mrs Sarginson:** May I add one comment?

**Mrs Cunningham:** Yes.

**Mrs Sarginson:** I would like to go on public record saying that although this is a public hearing and all three parties are here to gather information on the impact of the conversion package on women and utilize this information in the best interests of Ontarians, I was shocked and horrified to observe two NDP members throw away information provided by the Association of Day Care Operators of Ontario during yesterday's presentation. One member tore up ADCO material in public view before ADCO finished its presentation. I will stand in a court of law and tell you that this is what happened.

**Mr Perruzza:** On a point of order, Mr Chair: The witness before us has levelled an accusation. She has smeared an entire party. She is talking about two individuals. I would like her to name those two individuals, but I would also like you to let her know what the repercussions of that may be before she goes on the public record and makes that public.

**Mrs Y. O'Neill:** What are they?

**Mr Mahoney:** What are they? Capital punishment? What are they? What the hell is this?

**Mrs Sarginson:** I have stated I would stand up in a court of law and state what I have seen.

**The Chair:** Mr Mahoney.

**Mr Mahoney:** Mr Chairman, that is so out of order it is unbelievable.

**The Chair:** That is not a point of order, Mr Perruzza.

Interjections.

**The Chair:** Order. As Mr Edighoffer used to say, we will just wait.

**Mr Perruzza:** Sometimes we receive four, five, six and seven copies at least. One copy used to suffice, possibly two. If you have three, four and five, yes, some of it will end up in the garbage, okay? She is levelling a direct criticism at—

**Mrs Sarginson:** Maybe you would like to hear—

**The Chair:** We will take a five-minute recess.

The committee recessed at 1502.

1509

**The Chair:** The standing committee will come to order. I would ask all members to take their seats. Mrs Poole.

**Ms Poole:** Mr Chair, on a point of order: As legislative committee members it has always been our practice that we treat witnesses with courtesy and at least we try to respect some decorum in this place. I have seen over the last few years a growing lack of respect for witnesses and courtesy not being extended. I would like the witness to continue her statement. In fairness for the disruption that we have all caused as members I think the least we can do is give her that courtesy.

**The Chair:** Thank you.

**Mrs Sarginson:** Thank you. May I continue?

**The Chair:** You may continue. I was asked during the recess to remind the witness that while members here are protected by parliamentary immunity, no one else in the room is.

**Mrs Sarginson:** Thank you. I will simply continue.

My statement to this committee is, whether or not the information is what they want to hear or is a duplication of prior information, I feel that all members of this committee have an obligation to the people of Ontario, and in particular to the operators whose lives they are destroying, to show common courtesy during these hearings. The material they destroyed in public represents minimally 80,000 citizens—40,000 in the independent business sector, 650 operators, 65,000 employees and 30,000 parents. If this is the NDP's open consultation—



**Mr Perruzza:** On a point of order, Mr Chair: With all due respect, the witness is launching an attack based on someone's taking a piece of paper, of which we received many copies—

**The Chair:** Mr Perruzza, that is not a point of order.

**Mr Perruzza:** From that, she is drawing conclusions that the NDP—

**The Chair:** Order.

**Mr Perruzza:** —is an insensitive party and has destroyed—

**The Chair:** Mr Perruzza, you are out of order. I have ruled it is not a point of order.

**Ms Poole:** That was a piece of paper, one copy per member. There was no duplication, Mr Perruzza.

**The Chair:** It is not a point of order, Mr Perruzza.

**Mr Perruzza:** If she wants to name somebody as having destroyed a document or chucked the document in the garbage, then she should do so.

**Mr Mahoney:** Drummond White.

**Mr Perruzza:** Okay. Otherwise she should not make broad, sweeping statements—

**The Chair:** It is not a point of order.

**Mr Perruzza:** —and draw conclusions from it.

**The Chair:** When I tell a member that he is out of order, that he should not have the floor, he does not have it. You may continue.

**Mrs Sarginson:** In my opinion, if this is the NDP's open consultation, it is obvious to me that they are interested in their own ideology, not in the children and not in the many women whom their cruel policies will affect. Also, if this is a women's issue, I do not understand why the NDP has sent six men today. Thank you.

[Applause]

**The Chair:** I would remind people once again, this is a proceeding of the Legislature. There can be no public demonstrations.

**Mr Mahoney:** Right, withdraw it.

**The Chair:** I would appreciate the help of both members and people in the audience in trying to maintain the decorum.

**Mr Mahoney:** Mr Chairman, a point of order: In the interests of trying to establish some decorum and perhaps settle some of the acrimony that we are all feeling due to the frustration, I guess, of the legislation that is being caused here, I referred to one of our colleagues, Mr Mammoliti, as a moron earlier this morning. While I might have felt that at the time, I think it was inappropriate and I would withdraw those remarks.

**The Chair:** Thank you very much, Mr Mahoney. Mrs O'Neill.

Interjection.

**Mr Mahoney:** You can do whatever you want with it, George.

**Mrs Y. O'Neill:** Mr Chair, I feel that we are not going to have an opportunity to meet on this subject again. I wonder if it would be possible, since my area of the prov-

ince happens to be eastern, to have some definition from the ministry, even this afternoon, about what areas it includes in the southeastern region in the reports we got handed out to us today.

**The Chair:** I am sure someone from the ministry would be pleased to provide that before the end of the day.

#### POLICY RESEARCH CENTRE ON CHILDREN, YOUTH AND FAMILIES

**The Chair:** The next presentation will be from Child, Youth and Family Policy Research Centre, Laura Johnson. Good afternoon, Ms Johnson.

**Dr Johnson:** Good afternoon. That name was close to right. The Policy Research Centre on Children, Youth and Families is our new name.

**The Chair:** Thank you for correcting us. You have 20 minutes to make your presentation. If you will introduce yourself and your organization for the purpose of our Hansard recording, you may begin.

**Dr Johnson:** I am Laura Johnson and I am the research director of the Policy Research Centre on Children, Youth and Families. What I am going to be doing today is speaking to the research literature on the very specific issue of quality of child care and auspice of child care.

I am going to be speaking about quality in terms of measurable aspects of care. Quality of child care is something that is very occasionally used as a general global construct. More typically it is used in the form of discrete indicators related to children's physical, social, emotional and intellectual development. It is in that sense that I will be referring to the concept of quality of care.

In terms of auspice, what I have been trying to get from the review of the literature is a clear distinction of for-profit and non-profit child care. It is often very difficult to have it be that clear. Often there are many more categories and data grouped into more specific categories than we might want, but I am attempting to make that generalization.

I think it is important to note right from the outset that while our interest in conducting this research review has been in auspice, which is auspice or sector of care or sponsorship—auspice is kind of an awkward term, but I think it is technically the correct term—we certainly know from the day care research literature that there are other contextual factors which have an impact on the quality of care. These factors include standards of care and enforcement of those standards, funding of child care and parental involvement. Auspice fits in there somewhere. It is one of the factors influencing quality of care, but none of the research results assumes that is exclusively a factor which affects quality of care.

What I have tried to do in this brief research review is to get up-to-date data, up-to-date research. I have looked for Canadian research. There is a limit to how much data we can find. I think it is important to stress that what I will be presenting in this brief overview are highlights from the study. I am not going to be giving a comprehensive description of all of the results of the study. In many cases, a whole lot of aspects of quality of care were looked at and a whole lot of results that are not statistically significant are

presented. What I am going to be presenting in my highlights are the significant results.

I think another important caution in looking at data like this, measures of quality group centres by auspice, is to point out that we are looking at characteristics of groups of centres. We are not talking about individual centres. There is extreme variation within any category and what we say about a group is a statistical result and does not necessarily reflect a particular centre located within that group.

1520

What I would like to do is build on Gillian Doherty's basic review of literature and present findings from what we consider to be four key studies that present information on this question. Some of them are studies that are in progress and we are going to have to wait until the completed research is available for the data. Some of it unfortunately is not Canadian data. Some of it is not from Ontario, but at this point I think it is the best available data we have.

I should say that in reviewing this literature our centre had the help of Martha Friendly and her staff at the child care resource and research centre. In addition, we did a brief consultation, a brief survey with what we consider to be key informants, key research experts who are working in this area.

One of the studies that is addressing this issue of quality of care is an ongoing study. It is by a Canadian researcher who is working on a doctorate in sociology from the University of Calgary, teaching in the United States right now, but who has collected the data and is presently analysing data that look, among other variables, at auspice and quality of care. He did his research in Calgary.

He selected a representative sample of 45 child care centres that serve the age group of children 19 to 35 months; 31 of them, or 69%, are for-profit, and 14 or 31% are non-profit. Professor Friesen says this reflects the distribution of care in that city. He did an observational measure of quality of care and of child care giver interaction using a standardized measure, the infant-toddler environment rating scale.

What Professor Friesen did to get access to these centres—he did not deny he was looking at and assessing the quality of care in centres, he was very explicit about that; our research ethics generally require that that is what one does—was he said to centres that in return for opening up their doors to his team of researchers he would give them a report, an assessment of the quality of care in their centre, and would also give them a ranking. They would get a quantitative score and a ranking of how they fit in with other centres.

His results show, looking first at an overall measure of quality of care giving, the extremes, that 32.4% of the non-profit care givers were rated very good and 14.7% were rated poor; 11.1% of the for-profit care givers were rated very good and 44.4% were rated poor. Another variable he used was care giver training, using a measure of the percentage who had formal ECE training. In that sample, about 53% of the non-profit care givers had ECE training and 21% of the for-profit care givers had ECE training.

As I said, this is research in progress. This part of his analysis has been completed. It is a doctoral thesis that is going to be defended this summer, and at that point published data will become available.

The next study is from the United States, which is a piece of a larger study, the United States national child care staffing study. This is an analysis that looks at, as the title says, the effects of a number of what they call policy variables on quality of care. In this sample, they were looking at one city, Atlanta, Georgia. They were looking at 46 child care centres, children with an age range of 14 to 54 months, and centres of four different auspices: independent for-profit centres; for-profit chains; non-profit, non-sectarian centres; and non-profit, church-run centres.

They used two measures of quality of care. Again, these are standardized measures these researchers did not make up, but they are measures that are used over and over again in a number of studies. They are aimless wandering and attachment security with the teacher. Their findings in general terms were that the children attending non-profit centres were more securely attached to their teachers and also had more positive interactions with their teachers and spent less time in aimless wandering.

This next study also uses data from that United States national child care staffing study, but this one is a larger data set using data from five different cities. It uses the same grouping of centres by auspices, and uses a variety of measures of quality. This is a study that was very recently published in the *American Journal of Community Psychology*. I will go quickly to the findings from this study.

They find that for-profit chains had fewer staff per children than the non-sectarian, non-profit centres. They found that staff turnover was higher in for-profit chains than in non-profit centres, and staff turnover was higher in independent, for-profit centres than in non-sectarian, non-profit centres. For infants and toddlers in the study, they found that the quality of care giving and quality of activities was lower in for-profit centres than in the non-sectarian, non-profit centres. For preschoolers, the quality of care giving was found to be poorer in the independent, for-profit centres than in either group of non-profit centres. The quality of activity for preschoolers was poorer in the independent for-profits than in either the chains or the non-sectarian, non-profit centres.

Because this is a study with a measure that is observational and they are looking at interaction between care givers and children, they judged that staff in the independent, for-profit centres were more harsh and less sensitive than staff in the non-sectarian, non-profit centres. They found that staff in the for-profit centres had less early childhood training than staff in the non-profit centres and that non-profit centres, in general, were more likely to comply with regulations than were for-profit centres.

1530

The fourth study is a Canadian one. It is a recent one. I believe this research has been discussed today. I can go through the findings quickly. This is the study on compliance with the Day Nurseries Act among centres, not a sample of centres but among centres, in Metropolitan Toronto. This is a study done by Sharon West.



The study was done on 431 full-day child care centres, excluding those operated by the municipality of Metro Toronto and excluding centres serving exclusively school-age children. There was a variety of different types of auspices. There was non-profit commercial, non-profit parent or community board, non-profit agency-operated—such as centres run by the YMCA—non-profit operator-appointed board, church-sponsored and workplace-sponsored. The measures in this study are the type of licence granted, whether it is a full licence or a provisional licence, compliance with ministry regulations, reported complaints and frequency of and reasons for visits by a program adviser.

In general, the findings from this study are that for-profit centres were less likely to comply with regulations and more likely to have a restricted licence than were centres that were under other auspices. Looking at the distribution of centres that were subject of a complaint to the ministry in the year under study, 33.5% of them were for-profit centres, 27.5% were church-sponsored, 22% were non-profit operator-appointed board and 13% were non-profit parent/community board.

**Mr Jackson:** What year are we talking about?

**Dr Johnson:** We are talking about the year 1987-88.

Looking at violations of regulations regarding staff-to-child ratios in that year, 53.8% were from for-profit centres, 15.1% were non-profit parent/community board centres, 45.4% were non-profit operator-appointed boards and 45.4% were church-sponsored centres.

There are a number of conclusions from this brief review of these studies. One is the general conclusion that these preliminary research findings, some of them not so preliminary but some of them research in progress, suggest that non-profit centres do offer higher-quality care.

In looking at that it is important to go back to what I said at the beginning, the relative influence of other contextual variables, and note that auspice is not the whole picture, that it is one of a number of factors. Another is funding, another is standards and the enforcement of those standards and another is parental involvement.

We do not have a database in Canada that lets us look at the relative influence of those variables. It really is problematic to go cross-border-shopping to get those data. We can look at the studies that are done in Atlanta. They are suggestive to us, but we really do have to develop our own database so that we can do this kind of research here.

We do know enough from these various studies, though, to ask some questions about why we get the kinds of results these studies are showing. We know from earlier research, a 1984 study done by Patti Schom-Moffot in Canada, that there are differentials in general in salaries paid to staff in non-profit and for-profit centres and that the non-profit centres tend to pay higher wages. We know from the US data that paying staff better leads to lower levels of turnover and is correlated with child-oriented measures of quality.

If we wait just a little while, we are going to have a new study by Patti Schom-Moffot available in a month or so that is going to give us new Canadian data we can break out by individual provinces to have some of this information.

Just as a last factor, it is argued that there are in-kind resources that may be available to centres in the non-profit sector that may account for some of these differences in quality. It may be also that staff self-select themselves into programs by auspice and that the better-trained staff are the staff we find in the non-profit centres. That may account for these observed differences in quality. I will stop there.

**The Chair:** Thank you, Dr Johnson. We appreciated your presentation this afternoon.

#### MOPPETT SCHOOL

**The Chair:** The next presentation is the Moppett School day care, Diane MacBride.

**Mrs MacBride:** I have a VCR tape.

**The Chair:** Okay, we will take five minutes while we set up for that.

**Ms Poole:** Since we are already behind schedule, I wonder if the witness could begin her presentation. Do you need to do the VCR first?

**Mrs MacBride:** I can do a little bit but then I do need the tape, and I gave it to the gal.

**The Chair:** That will be great. As you know, you have been allocated 20 minutes by the committee for your presentation. If you would like to identify yourself and your organization for the purposes of our Hansard recording, we would appreciate that.

**Mrs MacBride:** My name is Diane MacBride and I am the owner-operator of the Moppett School in Newmarket in York region.

It was my understanding that we were not to be talking about quality.

**Ms Poole:** It was our understanding too.

**Mrs MacBride:** I am here before you today to speak about the impact of a universal day care system on myself, Diane MacBride, an ECE certified by the association. I have been in the field for approximately 11 years and have worked with all ages of families and children.

About five years ago my family decided to mortgage our family home and buy a day care centre in which we could run a good, quality program around a family scene. When I first started in this field 11 years ago there was no indication that the independent sector would be regarded as disgusting, rotten, evil people, but that is how I feel the NDP policy sees me.

The rules changed somewhere along the way. I was brought up in a hard-working Ukrainian family where it was good to take your own money and work and put it into something, and put your whole heart and soul into the job. It was good to run an excellent independent business and get a paycheque for your labour. It was a parenting tool that my parents taught me to respect and that I put value in. Now the NDP policy is changing this. The values I was taught as a child seem to have fallen by the wayside. This government does not want the independent sector to play a part in child care. I have been labelled as a bad and evil person making money off the backs of children. Yet this is not how I was brought up by my family, and I am not

bringing up my own family in that way. Nothing could be further from the truth.

1540

I employ 15 care givers who are dedicated people who take great pride in their responsibilities and know what type of impact their responsibilities have on our day care children and families. They do many things above their job descriptions. For example, they visit day care extended families in the hospital. They take time to get to know the person. They deal with parents and get to know our parents and their concerns. We have even been support services in funeral homes, and that is not too long ago. As an employer, I am responsible to my staff, some of whom are the sole providers for their families as their spouses have been laid off.

The personal impact is simple. I have mortgaged my home to buy a business. I see the government has made my business worthless and will leave me with a mortgage and no way to pay the bills. I also will have to be retrained for some other type of work; I could not work for the government in its new system as its values and my values are definitely not the same. I find myself doubting my values. Please remember that I was taught that it was good to invest, and from investment you could make a salary. Now I see that the NDP is clearly stating that this is not so.

The next part of my presentation is basically on tape and then I just have a little closing remark. You have to remember that this was not professionally done.

[Video presentation]

1552

**Mrs MacBride:** That was a parent. That is the last of the tape.

Basically what I would like to bring too is a copy of the purchase-of-service agreement in York region. Nowhere on this purchase-of-service agreement for fee assistance does it say that the Moppett School is asking for subsidy money. The money goes to the parents. One of the things we have been faulted for over and over and over again by this particular government is that it does not want to see public funds go into private centres. Nowhere on our purchase-of-service agreement does it say that those moneys are going to the Moppett School. The money is being picked up by the parents, because if you are going to do that, you have to make your welfare people accountable for their money too, in the same particular way.

In closing, what I would like to say is that I am disillusioned with our country. I feel that my rights, my freedom, my female independence and my livelihood have all been taken away from me. I am very sad to think that the many students we have in our centre cannot ever experience what I have, to own their own centre. I am getting very tired of always having to leave my centre to fight for my existence. The impact on myself as a female and females like myself can only be compared to medieval times.

**The Chair:** We have some questions from the members. Mrs Poole, about a minute.

**Ms Poole:** Thank you for your presentation today. On this committee over the last two days, time after time we seem to be getting sidetracked on the private versus non-

profit issue as opposed to the conversion announcement. You mentioned that you are an ECE and a member of the association.

**Mrs MacBride:** Yes.

**Ms Poole:** Earlier we had a presentation from the association where they said that in 1987 they decided to take a position on this issue and support the previous Liberal government's announcement about future expansion being in the non-profit sector; however, they would continue to support the private sector through the DOGs. One thing I was missing from the presentation was, has the association membership taken a vote on the conversion proposal by the NDP government?

**Mrs MacBride:** The Association of Early Childhood Education of Ontario?

**Ms Poole:** That is right.

**Mrs MacBride:** Not that I am aware of. I sit on the Ontario public policy committee. We are having a committee meeting. My understanding was that auspice had nothing to do with it, that the association stood for the people delivering a quality program, and I know at the last conference they had people who were upset that they were making statements and, no, it had not gone through our membership.

**Ms Poole:** What we have had far too little of is discussion on the impact of this conversion—

**The Chair:** Thank you.

**Mr Jackson:** My Ukrainian-born grandfather used to say to me, "Cam, get a job where the government can't tell you when to stop working," and I guess if Grandpa was still alive today, I would have to inform him that at least I did not get into a job where the government put me out of work. So I know, since we have similar upbringings in that regard.

Diane, the minister was before us yesterday, and she made some indications that there were subsidy dollars available for non-profit centres that were experiencing financial difficulty. We have also heard that you are in competition, all centres compete on the basis of quality, and that is perhaps why the commercial centres are doing a little better these days, because there are so many non-profit centres that are experiencing financial difficulty. Are you aware of any centres in your immediate area that are in financial difficulty and/or receiving these new funds the minister referred to yesterday?

**Mrs MacBride:** No. I am not.

**Mr Jackson:** How do you feel as a taxpayer that here you are paying business taxes for a marginal profit line, if that, and yet we are now introducing a third level of subsidy for the non-profit sector?

**Mrs MacBride:** I know a lot of the parents I have—the majority of the parents in my centre are full-fee-paying parents—are very upset to find out that their before-tax dollars are being taken for tax and subsidy spaces and their after-tax dollars still have to pay for their child care. They just cannot understand how a government can do that, tax them and tax them and tax them.



**Mr Bisson:** Seeing I only have a minute, I just want to make three statements to clarify the record here. One is that a statement was made that there is a conversion policy in place. Let's be clear that there is not a conversion policy in place at this time. It is still being consulted on. The idea is to sit down with the partners which are opposed to the private day care centres and other people to try to come to some sort of an equitable arrangement. We can get in a long discussion about that; we do not have the time at this time.

The second thing is that I was interested that one of your staff asked the question—and I hope you go back to your staff with that—"Who will hire me?" should your particular day care close. First of all, we are not telling you to close. In my community there are only private day care centres available. That is all we have. We have one which is a non-profit out of a college, so it is a different animal, and I do not want to use that term, but that is the only one I can find.

What we are saying is that if the community chooses and there is no non-profit out there, to give those service dollars over to the private sector within the commercial sector, that is fine. The only thing we are saying is that eventually we want to be able to make the transition over a period of time that will go to the non-profit. It is not a question of throwing you out; it is a question of, once you come to the point you do not want to be in business any more, that will be your decision.

The last thing is that you made a statement at the beginning and you are saying the government is saying, New Democratic people are telling you, that we see you as bad and terrible people because you are in the private sector. Excuse me. Hogwash. We are not saying that to you. We understand more than anybody else the importance of making sure that the private sector is alive and well. What we are saying is that we believe the public sector must take a role within the day care area, and what we are saying is that we want to make that conversion the same way the conversion was made when it comes to hospitals, schools and other facets it was decided at one point in our society had to come under the public auspices. To say that we are against the private sector, I have to correct you, no, that is not the case.

**Mrs MacBride:** From where I am seeing, that is not—

**Mr Bisson:** From where I am sitting, it is not either.

1600

**Mrs MacBride:** It is not perception. Basically, the staff that you saw—number one, she is a non-trained staff. She said she was a teacher's assistant. We are told there is not a lot of money when the conversion package gets straightened around.

To address your second statement, basically there would have to be a need. In my area there are a lot of non-profit centres. I called this morning before I came before the committee and they are about 30% empty. So they would never convert the Moppett School, and the Moppett School is rented, so there is basically nothing to convert.

Second, yes, and I will say it again, I do see you as seeing me as an evil, foul person making money off the backs of children and all the rest of the things. In a lot of what has happened, basically I see that the NDP is putting me personally out of business. Number one, there is the \$5,000 salary difference for—

**Mr Perruzza:** Talk about free trade.

**Mr Bisson:** Talk about putting 50,000 people out of work because of free trade and come to me and say that—

**Mr Perruzza:** There are 32 new taxes.

**Mrs MacBride:** But we are here on the impact of—  
Interjections.

**The Chair:** Thank you, Mrs MacBride, for coming today.

Interjections.

**The Chair:** I think I am the one who needs the ECE training.

**Mr Bisson:** Good shot, Mr Chairman.

JANET HODGKINSON

**The Chair:** The next presenter will be Janet Hodgkinson. Good afternoon. I know you have been monitoring this situation, so you know you have 20 minutes, you know you should introduce yourself for the purposes of Hansard, and you know the members enjoy some time to have a discussion with you following your presentation.

**Mr Bisson:** Mr Chair, just a brief point. My schedule showed Sue Bird afterwards. Is this a substitution, or has Mrs Bird not shown up?

**Mrs Hodgkinson:** This is a substitution.

**Mr Bisson:** Okay. So Mrs Bird will not be here?

**Mrs Hodgkinson:** No. She is in Florida at the moment.

**Mr Bisson:** Oh, God, I envy her.

**Mrs Hodgkinson:** Isn't that nice? I wish I was too.

**Mr Bisson:** I wish I had the money to go.

**Mrs Hodgkinson:** I would rather be there than here.

**The Chair:** Wouldn't we all?

**Mr Jackson:** You should clarify that Sue Bird is a parent.

**The Chair:** All right. Do not test my training again.

**Mrs Hodgkinson:** Okay. I just do not want to be knocked over the head with it either.

Before I start my presentation, I am going to say something. I am one of these people who, while the rest of them speak from here, with all this knowledge, I speak from here; it is truly from the heart. Please listen.

I should like to thank the Chair and the members of this committee for allowing me this opportunity to bring my concerns and my feelings before you today. Being the optimist that I am, I hope that this time someone on this committee will listen.

My name is Janet Hodgkinson. I have worked for 21 years at Central Day Care Centre in Hamilton. Central Day Care is a commercial centre. This government has told me I am inferior to a person with the same years of experience who is working in a non-profit centre. According to the

government, I have therefore contributed nothing to the welfare of the children in my care. Is it any wonder I and others like me are angry at this government's policy?

We are fortunate, however, in that the parents whom we serve in the commercial day care centre trust us to provide them with high-quality day care services, respect us as professionals committed to excellence in our field, and support us 100% in our struggles with this government. These parents have taken the time to educate themselves on this issue and are obviously more knowledgeable than this government. This is very sad.

No matter what anyone else says, if this policy is passed, I shall lose my seniority and everything that goes with it. I am very hurt to think that for years I have attended meetings, striving for better-quality day care, and for all of that all I get is discrimination and punishment because I chose to work in a commercial centre.

If this government feels the system is in such bad shape, then, number one, the early childhood educators are not doing their job. Number two, you are saying to me that parents who use the commercial sector are bad parents; they do not care about the welfare of their children.

If this is the case with early childhood educators, who is responsible for putting them there? The colleges? The screening process for applicants? The field placement supervisors who assess the students? If the boss does not give the right instructions to the fellow digging the foundation of a building, you and I both know the building is likely to collapse. So let's change the system. Start there instead of getting rid of commercial centres. They are not a problem.

I think ECEs are doing a fantastic job in both sectors. These girls in the commercial sector are every bit as good as the girls in the non-profit sector, maybe even more so because for sure the money factor does not enter into it. They obviously care about the job and the children, since ECEs in the commercial sector only receive up to \$3,000 in government grants, while their colleagues in the non-profit and government centres receive up to \$8,000 in government grants.

As for parents, do you really think they do not care? Do you think they throw their children into a centre or leave them for eight hours a day and just walk away and do not care? I do not think so. In my experience, the majority of parents spend weeks and sometimes months deciding on the centre which suits them. Do not tell me the parents should not have this choice.

The government sets the regulations; the government regulates the system. Are the consultants not doing their jobs? Do we even hire enough consultants to do the job? Do not tell me the commercial centres are the problem, because if the builder does not put up the walls right, you are still going to have the house falling down.

We feel the system works but could stand some improvement, so why is this government disrupting the whole system instead of improving what is already in place? I am not naïve. I realize governments cannot please everyone. But let's use common sense and logic before we make a very bad decision and completely disrupt and destroy people's lives when there is no sound reason for it. Listen to what the people are saying. We all have feelings

for where something should go, but if the government feels universality is the way to go, tell us the logic of that decision. Listen to what we have to say. Let us decide together and work together, not against each other. Let's build on what we already have instead of tearing it apart. The whole house needs to be strongly built. If the walls and foundations are strong, it should not matter what kinds of rooms are inside it.

I want to tell you that I have had many consultations for over a year now, and I am still none the wiser nor any further ahead. I am consulted to death and I am sick of it. Nobody is listening to what we are saying. Even most of our NDP MPPs in their own ridings do not listen. We feel as if we have the plague; that is how bad it is. They do not even care how it affects their own area. These are the people who are supposed to be fighting for us, so where does a little guy go? We do not have the financial backing. If it was not so sad and so very serious, it would be laughable.

When I have these consultations, I do have the opportunity to speak. As far as I can see, when it is all over they have not listened to a word I have said. All they have accomplished is that I have wasted my time and the taxpayers' money. My time is very precious, and my tax dollars too. All I did was give them the opportunity to stand up in the House or anywhere else and say they had consulted.

I was very happy when the NDP government was elected, because I thought here was a government that would be willing to listen to the people, that thought about and cared about the little guy on the street. I am one of these. How naïve I was. I found out last January that we had elected a government that does not listen and that really does not care what happens to the people of this province. My own feeling is that they are like horses in a race. Their blinkers prevent them from seeing what is going on around them, and the race they are in is going to cripple this province.

1610

In closing, and in case you all have forgotten: the children. How will they be affected, who speaks for them and just where do they fit into this mess?

I know I have 10 minutes, and I am afraid I have not taken it up, so I would like to add something if you do not mind. I have heard that quality is not the issue any more. It should have never been an issue. Do you honestly think that ECEs or the parents who are in the commercial sector do not have brains in their heads? That is putting it bluntly. I can assure you that early childhood educators would not sit back and allow the children in their care to be badly treated. They would report it immediately. The parents would pull their children out so fast that everybody's heads would spin. We are not a bunch of garbage for you to decide what disposal unit you are going to drop us in next.

I believe the big issue now is the big, bad words "profit" and "accountability." Take me, for instance. I have a nice apartment; I have a car. I am a very good manager of money and always have been, and I receive compliments on that. It is one of my strong points.



Let's turn the coin over. The operators receive tax dollars, be it in subsidies for children or DOG grants. They manage their money very well for what they receive. They also have high standards in their centres, and may I add that it is also saving the taxpayer money. They are being punished and treated like criminals. Where is a sense of this? You should be taking a leaf out of their book. If this is not accountability, what is?

I have some more time, and I have a question. With the hundreds of millions of dollars of taxpayers' money, which is mine, that this government has allocated to day care, the taxpayers of this province would like to know the answer to this question. The question includes the staff and the people who use these facilities, and I would presume the government has done a study on this: (a) How many new people will be employed and how many new subsidized spaces will be created, or (b) How many people will be put on unemployment or welfare and how many children will not receive day care? With the high unemployment rate and the recession, I feel it is most important that the taxpayers of this province have this study, as they are paying for this system.

**Mr Jackson:** Janet, I have heard you speak before. Thank you for not disappointing the committee with your presentation. It was very good.

One of the concerns I have is knowing the circumstances around Hamilton, which is where you provide services. We are seeing a trend where subsidized spaces are being dropped without regard for where they are geographically located within a community, and busing services are collapsing. We are not seeing anybody look at the total delivery of child care in the greater Hamilton area; we are only seeing them implement the direction of the government. Could you comment on that? I know there have been some very serious concerns in the areas I have just identified. Maybe you could share some of that with the committee, how that approach is not planned and what its repercussions are to staff and families.

**Mrs Hodgkinson:** Do you mean about the subsidy spaces themselves, where the subsidy spaces are going?

**Mr Jackson:** And the provision of busing services. No one has really talked about busing services, which the commercial sector provides fairly frequently. That is part of the infrastructure which is in collapse. The non-profit centres are not noted for it.

**Mrs Hodgkinson:** No, they are not.

**Mr Jackson:** I had to rely on the pickup and delivery of my child, because my wife was in the hospital. I could not be there and I could not find a centre that had that as well in the non-profit, even if I wanted to go to them.

**Mrs Hodgkinson:** I do not know. I do not want to go into a subject that I am not as fully aware of. I know there are a lot of non-profits and I am sure the people who work in non-profit centres would be able to tell you if there are any services there. I do not know of any that bus the children. I only know of commercial centres that do bus the children. It is most appropriate that we do have this busing system, because of people going to work and they have to be at work at a certain time and cannot get into that.

As far as the subsidized, if I am getting your question right here, because sometimes I look a bit dumb when people ask me questions here, I believe you are thinking about this subsidy being put into the non-profit sector and not into the commercial sector. Is that what you are asking?

**Mr Jackson:** Not renewing spaces that are currently allocated and those kinds of things.

**Mrs Hodgkinson:** We have not had that problem in our centre so far, but I believe it will come to pass. Now it is very new. We are very lucky in our area that our regional council is very much for the commercial centre and the non-profit sector together.

We have always worked together as a team in the past. Now we are at opposite ends of the field and it is a crying shame that this is happening. I could just go into tears when I think of what this government has done to early childhood educators. I am going off your subject a little bit, but I think I have explained as much as I can in that area. I would like you to ask someone else that question; they can put more into it than I can.

I would like to say that I feel that they are doing a very bad disservice to ECE. We are not friends any more. They are running us down. They are running our centres down, and I think it is a very bad thing because we work together. We work together as a team and this is very sad to see. We are all in the same field: We take care of children, we take care of parents. Do not forget the parents, because we do not. They are pushing us apart. This is wrong.

**Mr White:** Thank you very much for coming by, Mrs Hodgkinson. I am very impressed with your presentation. You certainly have a great deal of fervour.

**Mrs Hodgkinson:** It comes from the heart, believe me.

**Mr White:** One of the things that strikes me is that on the second page of your presentation you are saying parents who use the commercial sector are bad parents.

**Mrs Hodgkinson:** That is what you are saying.

**Mr White:** I certainly have never said that myself.

**Mrs Hodgkinson:** But your government is saying it.

**Mr White:** I have had my children in a commercial group care centre, I have had my children in a cooperative centre, I have had my children in a number of different localities over a number of years. The issue for me was in terms of the quality of care they were receiving and, frankly, my wife and I made certain choices.

When I see the factors, it makes me more and more impressed with the quality of care that is provided by early childhood educators who are trained, who are capable and who are available to the children. I certainly have never made any statements like that. I have been involved in this field for a long time. I have been involved in social services for many years and I have never said categorically that all non-profit centres are excellent or private centres are not.

**Mrs Hodgkinson:** Can I answer your question?

**Mr White:** When I read this, I guess it says you are saying that I am a bad parent. Why would you say I am a bad parent?

**Mrs Hodgkinson:** Hold it just one minute. What I am saying is that the government is saying they are bad parents. Just hold it one minute.

**Mr White:** I am part of the government. I have never said that of myself.

**Mrs Hodgkinson:** I have been at meetings galore, meetings upon meetings, and what has come up at these meetings is that the quality of day care in the commercial centres is bad. So in other words you are getting back at the parents. The parents are using these centres, so really what you are saying—do you think they are dumb? Do you think parents are so dumb they are going to throw their children into a commercial centre where they get bad care?

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**Mr White:** I certainly have not. I have certainly chosen those very same centres.

**Mrs Hodgkinson:** But that is what you are saying. You are saying they are bad because the quality is bad.

**Mr White:** I have not. I have never said that, Janet.

**Mrs Hodgkinson:** You might not have said that but your government is saying it. You are part of the government, are you not? So you are part of the system. Come on. I am part of the commercial centre and I am here saying that we have good care and I will stick by that system. I do not go about saying that non-profit centres are bad, because they are not bad.

**Ms Poole:** Janet, thank you very much for your presentation.

**Mrs Hodgkinson:** You are very welcome.

**Ms Poole:** You are honing it down to reality, which is what the impact is going to be on the women, on the children and on the operators in the private sector.

**Mrs Hodgkinson:** And the parents. Do not forget the parents.

**Ms Poole:** And the parents. One point you have made which is so important is that parents do not just dump their children in a centre. They do investigate.

**Mrs Hodgkinson:** Exactly.

**Ms Poole:** And most parents do not have time to sit on a parent board. It is wonderful for parents who do—

**Mrs Hodgkinson:** Oh, yes, I agree.

**Ms Poole:** It is very valuable for commercial or non-profit centres if they can have an advisory board to help out, that is wonderful, but I am saying most parents do not.

My sister, when she moved to Toronto a year and a half ago, put her child into a non-profit child care, and I am a big booster of non-profit child care.

**Mrs Hodgkinson:** Mm-hmm.

**Ms Poole:** She withdrew him within four weeks. It was terrible. There was no supervision, it was dirty, the child was coming home with scratches on his face where other children were attacking him, and they were not doing anything about it. For the last year and a half she has had that child in a private centre which she is delighted with; quality care.

**Mrs Hodgkinson:** Mm-hmm.

**Ms Poole:** We keep getting off on that quality thing.

**Mrs Hodgkinson:** That is right, exactly.

**Ms Poole:** Many non-profit centres provide good quality care.

**Mr Perruzza:** On a point of order, Mr Chairman: There is a dialogue going back and forth. None of them are going through the Chair. She is saying "Mm-hmm" and she is going "Mm-hmm."

**The Chair:** Mr Perruzza, I do not know what the point of order is.

**Mr Perruzza:** The point of order is that there is no formal structure to what they are doing. You are just allowing dialogue.

**The Chair:** And you are helping us a lot. That is not a point of order.

**Ms Poole:** Janet, the point is that quality can be dealt with through compliance and regulations. That is a red herring. What we are here to look at is the impact of the conversion. Mr Bisson earlier said that the government does not have a conversion plan, that it wants to consult. Well, they have made a conversion announcement about their policy. They have made an announcement about conversion dollars, but what they have said is, "You're about to be executed; now we're going to consult with you on the coffin." That is what they have done.

What I would like to ask you is, are you getting any signals from the government that there will be a guarantee of seniority, of benefits, of rights, of the right to employment of the private sector child care workers if there is conversion?

**Mrs Hodgkinson:** None. I have not heard anything about any of these things at this time.

**Ms Poole:** Can your centre continue to operate if there are no new dollars coming in for wage enhancements and if there are no new subsidies allowed in your private centre? Can you continue to operate?

**Mrs Hodgkinson:** Because we are 98% subsidized, the children are subsidized, if there are no new subsidies coming in, then definitely we would not be able to operate.

**Ms Poole:** So this announcement, notwithstanding what the government is saying, will force you out of business.

**Mrs Hodgkinson:** Not me out of business; the operator out of business and me out of a job.

**Ms Poole:** Yet they say they do not have a plan.

**Mrs Hodgkinson:** Yes, exactly.

**The Chair:** Thank you, Mrs Hodgkinson, for coming before the committee.

**Mrs Hodgkinson:** May I apologize to you? I am afraid I am not used to this and I do not know the protocol.

**Mr Mammoliti:** It is not your fault.

**Mr Jackson:** Neither does he, Janet.

**Mr Mammoliti:** You did very well.

**Mrs Hodgkinson:** My apologies. I know when I am wrong.



**The Chair:** Thank you. Did you have a point, Mr Bisson?

**Mr Bisson:** I was just going to clarify the statement by Mrs Poole, but I will deal with it later.

#### CHILDREN ARE VIPs

**The Chair:** The next presentation will be made by Children Are VIPs. Carolyn Koff.

Interjections.

**Ms Poole:** You are obnoxious.

**The Chair:** Let's not start again. We were doing so well there for about an hour.

**Mr Perruzza:** Mr Chairman, she is saying that in 1987 she did not make certain comments that are in Hansard.

**Ms Poole:** Mr Chair, on a point of order: I would just like to say that I find these personal attacks most obnoxious and most unbecoming. If you have something to say to me, say it directly and not through innuendo.

**Mr Mammoliti:** You have about-faced.

**The Chair:** That was not a point of order.

**Mrs Koff:** This reminds me of day care. We have to redirect the children to get them out of difficult situations.

**The Chair:** Thank you. I think you have just done that for me.

**Mrs Koff:** I did not even mean that—the children. Should I leave now?

Interjections.

**Mrs Koff:** I missed the past two days' events. I have actually been sick. I have heard the past two days have been interesting, challenging, difficult and emotional. I will read what I wrote and hopefully we will have some good communication.

I am Carolyn Koff. I will give you a little bit of background on myself. I was raised on a dairy and cash crop farm outside London, Ontario. After going to the University of Waterloo, I went to the Ontario Teacher Education College, which no longer exists, in Toronto, and I taught for the Toronto Board of Education.

I opened my day care in 1979 with an enrolment of one child, and I built it up to where it is now, 12½ years later: 13 staff and 65 children. I work full-time at the day care. I do the 9 to 6 shift, and then I take work home with me. I work at night-time.

I have been asked to speak today on behalf of my day care. In day care, we work with many parents, staff, children and members of the ministry, and in the past 12½ years, I have learned that we have to work together in order to have a successful day care.

First, we have to work together to meet the needs of our children. We are continuing to put money back into our day care despite this threatening situation. Aside from the ongoing usual purchases we make, we bought a computer for our senior kindergarten room in November. This week we purchased monster balls, which are recommended by the ministry—they are fantastic—and a parachute to add to our playground equipment for gross motor activities.

We know we have to continue to believe our school will be there next year. If we stop believing that, we should close our doors, because the quality and therefore the service will go downhill.

I am a firm believer in integrating children with special needs and children who are differently abled. We have on staff an early interventionist who works alongside our teachers with our children who have special needs. She is employed by the Ministry of Community and Social Services to work in our day care. She does a fantastic job, and I rely personally on her a lot for advice as to certain things that have to do with children which we may not be able to get out of a book. It is a fantastic example of how beneficial it is when the ministry works together with private enterprise. Rhonda has been with us for a year.

We recently hired a full-time teacher, Nancy, whose first language is French. She has taken over our French program for our senior kindergarten class and now teaches French to our junior kindergarten class. Our senior class is a private licence, because I have my bachelor of education.

We paid a kinesiology specialist, who has her own gym program, to teach our staff how to work with small gym equipment, and we will be having regular gym classes commencing this summer. We have access to a gymnasium.

Because good staff are vitally important to every day care and low staff turnover is equally important, we work with our staff to meet their needs as well. Four years ago, we implemented a staff training program whereby all teacher assistants we hire must commit to taking their ECE part-time one night per week. I pay for their courses, their exams, and I pay them while they are away on placements. I hire supply teachers to replace them when they are on placements.

The advantages of this are tremendous. You have staff who either have their training or are in training. Those in training gain support from the other staff and are kept up to date in child care education. They are excited about learning and they stay with our school. There is virtually no staff turnover.

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The children benefit immensely from this, therefore the parents benefit and the relationship between the teachers is excellent. I hope I can continue to offer this to my staff, because the benefits far outweigh the costs. Heather graduated with her ECE last year, and this year Donna and Yvonne will be graduating. I think it is incredible.

We have a VIP social committee of staff who organize euchre, pot luck dinners, games nights etc. We take turns hosting them and spouses and friends are included. We feel like we are a family. I should say three staff have been with us almost eight years, so we know them really well.

We work together with parents, whose needs vary according to their individual situations. We have opened earlier than 7 am and stayed later than 6 pm, cared for children for no fee whatsoever in situations where we know the child is at risk, or the parent or parents are in desperate financial trouble and are awaiting subsidy. Children's services division is aware of this.

Parents have input into our programs, and our programs and teachers are flexible to accommodate changes

and new ideas. We include parents in our cardiopulmonary resuscitation and Red Cross first aid courses. The parents pay for themselves and I pay for the staff. We have open-house evenings where parents join us for coffee and doughnuts, have interviews with their child's teacher, then sit and chat with the other parents.

We have Barbara Coloroso evenings where we show her video and break for discussion. One video we show is *How To Discipline Your Kids Without Beating Them*. It is an interesting video and a lot of fun, but very helpful.

Parents join us on school trips. This summer we are having a family picnic at Bruce's Mill on a Sunday so that grandparents and friends, as well as parents, children and staff, can join in the fun.

We consider our school to be a small resource centre, and parents call up for information ranging from parenting courses to marriage or personal counselling facilities. We work with physiotherapists, speech and language therapists who are working with our children and their parents, and we are there for parents if they just need to sit down, have a coffee and talk about their personal situations. They know we care about them and they care about us.

We have a good day care and I do not want to lose my job. It is a long story, but I placed the future of my school in my staff's hands at a staff meeting one evening in January. I went home that night and let them make the decision. None of my staff has left me during this struggle in the past year. I feel they have a right to decide their future in their school.

The following morning, the 13 staff each handed in a written decision stating their reasons, and 13 out of 13 committed to continuing as we are. Attached are excerpts from each of the 13 letters. This, more than everything wonderful that has happened during these past 12½ years, has moved me the most. Whether we survive or not I know we did not fail. As Mary Pickford said, "For this thing we call failure is not the falling down, but the staying down."

Ours is one of many private, non-profit and regional day cares doing a good job. Our past and present inspectors, parents, staff and members of our communities will tell you that, and it is reflected in the children in these day cares.

Marion Boyd wants to make junior kindergarten mandatory. She wants day care to become an extension of the education system. There are 900 day cares now school-based. She says it will make them more accountable. I do not agree. If only half of these 1.7 million agewise eligible children in Ontario go into this system, the cost to the taxpayers will be in the billions, and I do not necessarily think it will be better. If it is placed under the Ministry of Education, which is the direction I believe she and Rae are taking, then the implications are far-reaching and the impact upon the taxpayers will be devastating.

Instead, what if Marion Boyd and Bob Rae decided today to stop this indiscriminate building, such as the 11 taxpayer-funded, non-profit day cares built in my town last year, of which many are nearly empty and are operating at a loss? Oddly enough, this overbuilding has not only created taxpayer-funded false competition for private day cares, it has also created false competition for the newly

built non-profit day cares, and they have told me they are in competition with each other.

What if Rae directed these millions of dollars committed to buying out the private day cares' toys and equipment and the bailing out of non-profit day cares in financial trouble into decreasing the subsidy wait list? Millions of dollars would be saved by enabling parents to get off welfare, which costs the taxpayer far more per year than day care, and allowing them to go back to work while their child goes to day care. Fewer children would be at risk.

What if today they reversed their direction? Then 650 small businesses would continue to serve 30,000 families and the government would be taking in tax dollars instead of spending more; 6,500 staff would keep their jobs and their seniority; parent choice would be acknowledged and respected and the stay-at-home parents would not be penalized along with every taxpayer in Ontario by paying for a system they did not choose. Rae would save the taxpayers billions of dollars that have not yet been spent and are not there to be freely spent.

We have the support of the Progressive Conservative and the Liberal MPPs and MPs. We have the support of some NDP MPPs and caucus members. Today, I am hoping each of you will take a personal stand on this issue. If after reviewing the past two days' events you feel Bob Rae and Marion Boyd are right, I respect your decision and hope that you continue listening.

If you feel Rae needs to rethink his direction, then I hope you will take a stand and tell him your reasons why. Thank you for giving me your time.

**The Chair:** Thank you. Mr Mammoliti for three minutes.

**Mr Mammoliti:** First of all, thank you. You sounded very sincere and I am glad you did not come out and bash us.

**Mrs Koff:** My parents voted NDP.

**Mr Mammoliti:** Just today I heard some of the bashing and I was not that pleased. Nevertheless, you are very sincere and I want to thank you for that. Do you think that with a good education comes good care in terms of a teacher or care giver?

**Mrs Koff:** With a good education there is definitely a strong possibility that there will be better care. When I hire our staff, the first thing I look for is a sense of humour. I mean we have a way of hiring. It is true, because kids are very trying. I have worked with kids for 12½ years and before that I taught school. Education is not the be-all and end-all. What I do find, though, is that the first eight years I had my day care, the teachers who had their ECE seemed to be consistently better in general, but we have teacher assistants who are fantastic.

**Mr Mammoliti:** I am not questioning that, but I just—

**Mrs Koff:** The reason I implemented the program was because we found that with the TAs there was more turnover and also this attitude of babysitting. Sometimes they would come in for a year and leave.

**Mr Mammoliti:** Okay. It is good that you are honest. As government, we have to make some decisions. We have



taken a stance, no question about it. It is pretty clear, I would think. People know the direction we would like to go in. I think it is a lot more than previous governments have done. Would you agree with that? It is clear. People know where we stand on the issue. Would you agree with that?

**Mrs Koff:** People know where you stand on the issue, yes.

**Mr Mammoliti:** Just give us some advice then in terms of the statistics we are seeing. Today, somebody gave us some pretty shocking statistics in terms of teachers and the quality of care that comes with that and how non-profit is so much ahead of the profit—

**Mrs Koff:** Were the studies by Gillian? I actually bought her book and a lot of her studies were based on the US. The US has had a problem and I am not being sarcastic; it has been in the newspapers. They have had a problem with Satanism, witchcraft, animal sacrifices and buzzer-locked access entry systems. That is not predominant in the system, but there have been situations that, to my knowledge, have never happened, except sexual abuse in a private or non-profit day care. I guess it depends on where the studies happen.

**Mr Mammoliti:** This particular study, if I am not mistaken—

**Mrs Koff:** I think my concern is that there are poor-quality non-profit out there. There are poor-quality private centres out there definitely. Our own inspectors told us that. What I have a concern with is why should we all lose our businesses? Why should we lose our day care centres if we are providing a good service aside from the cost of the taxpayers? I do not think that is logical. I do not think it is fair that someone such as myself and a lot of my colleagues who have had businesses for 12½ years or longer and put everything into it should lose them. Logically, if we are offering a good service at lower cost to the taxpayers, we should be encouraged to save it. Let's get rid of the ones not doing their jobs.

1640

**Mr Mammoliti:** Even though I am sympathetic to what you are saying, I honestly do not believe you are going to lose them.

**Mrs Koff:** You know what, George, I have approximately half a year left. I made a loss last year in my business. I know some of the reasons I made a loss, because this battle has cost a lot. This was a struggle. You know one of the people was talking about taking the time out and coming down here. We are kind of worn out and this has been emotionally draining. It has caused problems with our relationships. It has been really tough.

I think it would be fantastic, if you want advice, if we could work together with the ministry and encourage the private centres to continue to exist if they are doing a good job. Get rid of the centres, non-profit and private, immediately—one of our inspectors told me a few years ago that the problem with the Day Nurseries Act is that while it is excellent, the clout that they have to enforce it just is not there. So I made a suggestion to her. I said, "What if you

implement a system of fining these day cares?" She said, "That is the first time I have ever heard of that and that might not be a bad idea." There has to be a way for these inspectors to enforce the Day Nurseries Act.

**Ms Poole:** Thank you very much for your presentation, Carolyn. It is good that you came today. Following up on what you were talking about with Mr Mammoliti, at lunchtime today I contacted one of the senior officials at the child care branch at Comsoc to talk to him about enforcement compliance, the non-profit versus private centre status. He was from the Toronto sector and he said that in Toronto, out of some 240 licensed centres, six non-profit and six private were in non-compliance. The vast majority of the centres in Toronto were in compliance and any infractions were very minor, but he substantiated what you said.

He said, "If there is one problem with compliance, with the Day Nurseries Act, it was formulated in 1946 and it is piecemeal ever since." He said: "One of the things is that they say, 'Go in on an annual basis to the licence inspection renewal.' Then if they go in three months later, they don't have the right at that stage to put them on a provisional licence and make then clean up the act. They have to wait for the annual the next year."

There are things like that. If quality is the issue, that is what they should be doing. What we are here to talk about is the impact of the conversion announcement of this government. What is going to happen to you? Can you last or is it going to be, like you said, six months?

**Mrs Koff:** I am not going to do what some of the day cares have done and close overnight. I am not going to announce on a Sunday night that—there is a day care in Richmond Hill that made an announcement, I do not know if you have heard of it, Sunday night that they had closed their doors. We have been receiving phone calls all week and I think it is terrible. I do not know if it is non-profit or private. I assume it is private because if it was non-profit they probably would have had more ongoing funding and be able to hang in there a while longer.

I have had my day care 12½ years. My major purchases have already been made. I think that has helped, but I do not know what is going to happen. The other thing is that I have my bachelor of education, so legally I cannot be retained as the director or supervisor if I did convert to a non-profit day care. I would actually lose my job too. I would lose my day care and my job. If my staff had chosen to convert I would have stepped down. I did not tell them that when I gave my presentation to them, but I would have stepped down and moved into something else. I am not sure what. This has been a tough year and I think we need a break.

**Ms Poole:** You are fortunate you have such a loyal staff, because what we have been hearing from many centres is that they do not think they can keep their staff with this announcement.

**Mrs Koff:** I do not understand why my staff have hung in there this long, I have to be honest.

**Ms Poole:** It is something to do with you, I guess.

**Mrs Koff:** I hope so. Some of them called this money situation a bribe. I would not have been upset if the staff had told me they wanted to convert, because I really strongly feel, after this many years—and the staff have been with me for years—that if that [inaudible] be allowed.

**Mr Jackson:** Carolyn, thank you for being here today and making your contribution. I think the answer to the question of your staff loyalty is part of your presentation. When I look at the quality program you are offering, whether it is language-based, special-needs children, challenged children, it is clear the kind of program you have. Even the government's greatest advocates would have to grudgingly admit you have an outstanding program.

Knowing that, I guess the first thing we should put in context is that you basically asked this question of your staff at a time when what was on the table for conversion was some dollars and some form of negotiated framework. What is of concern to some members of this committee is that the rules of the game have changed. We now know there is a moratorium, but the minister yesterday—and I will give you a copy of Hansard, because I want you to read this—under cross-examination said, "One thing I can tell you is when we do start converting again, we will not be converting centres in areas where there is supply." You are smack in the middle of one of the most overbuilt areas in Canada, which means you are doomed. I am sorry to say that. You have no way of applying for conversion any longer according to the minister's own statement.

Now here is what I wanted to ask you: The night the minister made the announcement she indicated that, although legally she could not block operators like you, she would try to prevent people from offering at private schools what you are capable of doing with your certification and application. How do you feel about the minister's public statement at that time that she would do all in her power to block you from becoming a private school when clearly the programs you are offering and your professional background would indicate that you would be providing an outstanding program in your community?

**Mrs Koff:** I guess it looks like she is hell-bent on getting rid of us regardless. That is what it felt like, that what we have to offer, the past 12½ years of what we have done, does not really mean a lot. I firmly believe that Marion Boyd does not speak for all the NDP people. I know we have PC and Liberal people who have verbally committed to our situation, but we also have NDP people who have spoken in our defence.

On the conversion option, I had one point I wanted to make that I think is interesting. Apparently the ministry is stating that there is—and I do not know the numbers—a huge number of day cares that have requested conversion. I received a package. I guess every day care probably got it. In order for me to request information on conversion, I have to fill out a letter of intent to convert, which I thought was interesting. I do not know what that really means as far as the future goes, but if I do say that I want to get information on it, I fill out a letter. So that just goes down

as another statistic of another day care that wants to convert.

**Mr Jackson:** The analogy is a gun to your head, and that is one more bullet in the chamber that the government has loaded.

**The Chair:** Thank you very much for coming to the committee and taking the time to do that today.

**Mrs Koff:** Thanks, Mike.

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**Ms Poole:** Mr Chair, while we are waiting for the presenter to be seated, could I ask the ministry for further information? Yesterday I asked them for a breakdown of the funding in the announcement and what the annualized cost was going to be and what the one-time cost was. I made that request on two occasions. That was not provided today, and yet one would think that would have been quite automatic. I would like to repeat that I would like an answer to my question number one. I would like those two items to be tabled with the committee.

**The Chair:** I trust the ministry has taken note of Mrs Poole's request and certainly will provide us with the information in due course.

**Ms Poole:** How about soon?

**The Chair:** Soon.

#### MOORE PLACE DAY CARE

**The Chair:** Our next presentation is Moore Place Day Care. Welcome. The committee has allocated 20 minutes for your presentation. We always appreciate some time that might be used for conversation with the members. You should introduce yourself and your organization for the purposes of our Hansard recording, and then you may begin.

**Mrs Quaglia:** My name is Lucy Quaglia. I have been living in Ontario for the last 15 years. I am an honours graduate from the Mohawk College early childhood education course and a certified teacher with the Association of Early Childhood Education of Ontario. I am going to talk later on about my day care, but if you want, as a point of clarification at the beginning, Moore Place Day Care started after November 1986. We did not have a choice at that time to obtain any direct operating grants if we were a private day care.

I supervise and manage a not-for-profit day care in Georgetown, Ontario. My experience in education goes back to 1960, when I started working for the Buenos Aires board of education in Argentina, where I held a kindergarten teacher's certificate. So basically I have been working in the field for 32 years. Lately I have been operating this day care.

When we arrived in Canada in 1976, I had the idea of starting a day care with the highest standards of quality. Over the years of training and work in this field in Ontario, I found that the only way we could achieve this in this province is with extra funding, which does not necessarily have to come from government, but for sure cannot be asked from the consumers. If we had to add more fees to the fees that they are already paying, the price would be



out of reach for the middle-income family that cannot qualify for a subsidy.

The Ministry of Community and Social Services has lots of regulations to enforce high-quality standards, but all those regulations cannot always be enforced. I was just listening to some comments of that MPP today, and I was saying how right she was.

I worked in a private day care in Ontario where the standards were barely met, the children were underfed and the staff overworked because some of the owner's family members, who were supposed to be working in the program, were hardly there. Most of the children were from families who needed social assistance, and it was painful to see that the city signed contracts with private operators after closing their regional day cares in search of cheap day care to save money with children.

Even when I worked in another private day care that had an excellent reputation, money was still watched to the last penny, and lunches were far from being attractive. The excuse was that children had to have a lot of beans because one never knew when there would be a war, and children had to be ready to eat any meal, as long as it was nutritious and fresh.

**Mr Bisson:** Excuse me, could you just repeat the last part? I did not catch it. The children had to have a lot of what?

**Mrs Quaglia:** Beans.

**Mr Bisson:** Beans? Okay, thank you.

**Mrs Quaglia:** That is all. Besides, the children were coming from highly paid parents, lawyers, doctors, nurses, real estate agents with gorgeous Mercedes cars, so if they did not eat properly at the day care, the idea was the children could compensate by eating at home at night. The staff were better paid than in the previous day care I worked for, but I calculated that with one group of eight preschoolers, the owner had the money to pay all the staff, and the day care had about 45 children.

Because I married a physicist, who does not find jobs at every corner, we had to take our time to settle down in Georgetown, the main reason being that you cannot have an immediate return on investment when you buy or start a day care in Ontario, and we could not risk opening one in London if we had to move soon after. In Georgetown, you are close enough to different universities and industrial centres that you can commute daily, so we took our chances there.

We bought an old house in 1987, had it rezoned and renovated to meet several regulations, and finally got licensed and opened in October 1989. At Moore Place Day Care our building allows us to have up to 26 preschoolers between 30 months and five years of age. The staff required would be one trained teacher, myself, with two untrained helpers and a half-day cook. But I did not think this kind of setting was going to improve services in the community. There are already a regional and several private day cares filling that need, so if we wanted to start over there and do a good job we had to change the setting.

We wanted to make a contribution and we had to do something different. That is why we have a licence for up

to five infants, 10 toddlers and eight preschoolers. This kind of care is very expensive because of the child/staff ratio.

We operate from 7 to 6 and offer two nutritious snacks and a hot lunch. The food is fresh and attractive and all the staff and any parents who want to bring in ideas for our menus are invited to do so. There is at least one dairy product plus fresh milk included daily, and there are always fresh fruit and vegetables.

We have the highest expectations regarding our program. We have to remember that this is a new day care, so we are coming together with a lot of new ideas and are trying to improve it all the time as much as we can. That is why right now we started assessing the children with a couple of psychological tools, to make sure our program meets their needs and not just the fancies of the teacher that particular week.

We have a yearly Christmas concert, a picnic every year and open houses, and we are starting to contemplate some fund-raising for the first time to renew some of the old toys and books and to have more parents' involvement. We have neighbourhood walks, weekly walks to the public library in town and monthly field trips according to our program.

I did not write it in my report, but we also have a purchase-of-service agreement with the region of Halton and our program allows for one integrated child within the program.

The fact that we have the grants also allows us to buy all the supplies we need for creative art, meals, cognitive games and toys in general because not all the money is spent in salaries. We also teach French and the person in charge is a French Canadian from Ottawa.

I am a strong believer in education at all ages. It never hurts and it improves your self-esteem, which makes a better person of you under normal circumstances. So the staff had their extra training and workshops paid by the day care in previous years, whatever they chose, when we were not big enough to do it by ourselves. This year we are in a position to offer the training at home, and we are in the process of organizing that training according to the day care's needs.

Moore Place has also been sponsoring the Week of the Child since we started our business, especially during the last two years. A big event of the Week of the Child in Halton is Kids on Cloud 9. It went to Georgetown in 1990 and to Acton in 1991. That has been done in conjunction with the Association of Early Childhood Education of Ontario, also involving members of the different regional and town councils.

When we started we were advised by the program adviser from the Ministry of Community and Social Services that if we opened the day care as a private one we would not qualify for the direct operating grants because we opened after November 1986 and only private day cares opened before that date would get half the amount the non-profit day cares are getting. Any day care opening after that month could not qualify for any grants at all.

It took lots of thinking and a full year of working under strained conditions for me to conclude that it was best for

me and for the day care in general to become not-for-profit. At a certain point in 1989 I was still wondering about which way to go, but all the signs were already there that the only way to survive was converting to not-for-profit to get the extra funding. I have to remind you, that was 1989.

When I wanted to have highly qualified staff in my private day care I had to pay for them with my own salary. We were just starting and we did not have enough children to pay for everybody. Although staff salaries are not all the expenses a day care has, they represent about 85% of the expenses.

So finally we settled for not-for-profit with a small board by July 1990, and it took a while to go through the procedures. Since January 1991 we have enjoyed the direct operating grants plus the enhancement received recently. We all got an extra \$3.50 an hour across the board throughout 1991, which is a big boost for us.

1700

We have four fully trained early childhood education staff, two of whom have started the process for certification—I can verify the certification is quite costly; if you do not have good salaries you probably are not in a position to spend \$180 in a year to start the process—a third who has a BA in early childhood education from Ryerson and myself, who am certified. We also have a fully trained National Nursery Examination Board nanny—an NNEB or British nanny—who assists the infant teacher. They are supposed to be the best qualified for that job. We have two untrained staff, one with six years of experience at the Y Day Care in Yellowknife before starting working for us in 1989, and a cook who also helps as an assistant when we need her in the afternoon.

All of them have great motivation due to the fact that their salaries have improved over the last year. They are also interested because they are heard when they have concerns about meals, creative materials, toys, scheduling, policies and programming. They feel like they are part of the team now that the owner is not the dictator or the taskmaster any more.

The salaries are not perfect, but we certainly have better salaries than the ones in private day cares in the area. In my particular case, my experience being a private operator was quite bitter. As a matter of fact, the day care still owes me basically the full amount of my salary since I started until the time the day care became not-for-profit.

To me, the fact that we got the grants has allowed us to have a stable group of staff who are willing to stay despite the fact that I have a strong will when it comes to standards and expect the best from anyone working with children. All of my staff are very reliable. I can hardly remember any having to miss a day of work for any circumstances. Besides, if I were here to make money, the setting with 26 preschoolers would be much more business-oriented but would leave four fully trained staff without work and there would be a group of parents who would be worried, looking for proper, quality care for their young infants.

Those grants have helped not only me but also the other six women who work at the day care and the parents

of the young children who have the chance to have infants in a day care setting. The difference I see between being for-profit and converting to non-profit is a wish to put education ahead of self-interest. When you deal with children it is not important to think the owner is the only one right. Everyone in contact with the children has to have a say, especially the parents. They have to feel free to see where their money is spent in the care of that child, and also where the money coming from the public purse goes. It is a matter of being accountable.

This day care is very small, but any parent who wishes to sit on the board has been invited to do so. The books are open to parents and any concerned citizen whenever they want to see how the money is spent. The day care sends daily reports home for every child, every single day of the year. The teachers have the responsibility to write the reports and they go unchecked unless a staff member asks my opinion.

We have regular newsletters, about once every two months or whenever there is interesting news to pass to the parents, and the policy of the day care is that it is a continuous open house. That is why, when a new parent decides to bring her child to our program, we ask her to come at least three times before her child starts to play with her child for at least one hour each time, free of charge, to get to know the teachers, the program, our strengths and our limitations. When they decide to leave the child in our care they fully know what they are getting for their choice.

Our philosophy is, "Moore Place Day Care is set to provide a happy, safe, relaxed environment where children can develop to their emotional, social, intellectual and physical potential within a caring framework provided by adults and peers."

The grants from the province have made our philosophy possible.

**Mrs Y. O'Neill:** Do you belong to a professional association of day care operators?

**Mrs Quaglia:** No, because when I wanted to belong they did not want me any more because I was already non-profit. They decided I was not supposed to belong to—

**Mrs Y. O'Neill:** So you have lost all your contact with the private day care operators. Is that what you are saying?

**Mrs Quaglia:** I have to remind you that we started in 1989, so we did not have the chance to be a private day care as such. When we decided to do something about that—

**Mrs Y. O'Neill:** But you just do not have a lot of communication with private day care operators at the moment?

**Mrs Quaglia:** No. As I said, I wanted to belong to the group and they decided since I was a non-profit I was not supposed to belong to the group.

**Mrs Y. O'Neill:** Could you tell me a little about the statement on your second-last page where you say that if you were there to make money it would be a more business-oriented environment. Would you expand on that, please?



**Mrs Quaglia:** Okay. If you go right down to dollars and cents, if I had 26 preschoolers, who are between 30 months and five years of age, I would make, after paying all the staff, about \$400 a day. If I had infants and toddlers and preschoolers, when I finished paying all the staff with the money I got from the different sources, I would have only \$195 a day. The ratio of child to staff is such that when I have preschoolers I can have eight children to pay one staff.

**Mrs Y. O'Neill:** What you are saying here, though, is that in one model you would not consider it viable to have a business and you could not without it being tax-supported almost completely?

**Mrs Quaglia:** No, I am not completely supported.

**Mrs Y. O'Neill:** But pretty much; you have a good component. I find this very difficult because, first, you are making judgements about people you have said you have very little contact with and, second, you are stating a model mainly based on preschoolers. You are making a very wide statement here that it is not possible to run a business in day care and I am not positive that the other representations we have had in the last two days would stand your kind of judgement.

I would like to ask you a little more. You have talked a lot about the way in which you prepare your staff and the kind of obligations you feel you have to your parents. Could you tell us a bit about the kind of board you have, who is on your board, how regularly you meet?

**Mrs Quaglia:** The board meets twice a year and is a board that is composed of three people. We invite the parents to come any time they want to. We have a former parent and my husband and I.

**Mrs Cunningham:** You would agree with most of the presenters today, then, that the direct operating grants are very important for your business?

**Mrs Quaglia:** Oh, they are.

**Mrs Cunningham:** Without the direct operating grants you would have trouble even opening a private child care, would you not?

**Mrs Quaglia:** Yes.

**Mrs Cunningham:** You never did operate a private child care in Ontario?

**Mrs Quaglia:** I did for a year.

**Mrs Cunningham:** You did for the one year, and it was very difficult?

**Mrs Quaglia:** It was very difficult. We were starting the day care.

**Mrs Cunningham:** How many of the children you have right now in your centre would be supported in some way by the subsidy?

**Mrs Quaglia:** Right now we have five subsidized children out of 23.

**Mrs Cunningham:** Do you think that is a pretty good mix?

**Mrs Quaglia:** Yes, it is. It is a healthy mix.

**Mrs Cunningham:** In your child care, if you were advising someone else, would you say that it is a good

thing to have regular fee-paying parents and subsidized children in the same centre, or would it make a difference to you?

**Mrs Quaglia:** I think the mix has improved the quality of the day care because the children have exposure to different kinds of children, especially with the integrated space too. We have the possibility to see that not all of us are the same, everyone has his own differences and so on.

**Mrs Cunningham:** So you have a little of everything?

**Mrs Quaglia:** Yes, you can say that, five out of 23.

**Mrs Cunningham:** Have you ever considered having any children who need some special attention, who might be developmentally delayed or physically handicapped in your centre?

1710

**Mrs Quaglia:** Yes, that is the integrated space, a child who has delays and who has a special education person come in once a week from the region of Halton to look after and give us an individual program plan of what we have to do for the rest of the week when she is not there.

**Mrs Cunningham:** You understand today that most of the people who have come here who have independent centres are telling us that without the direct operating grant they probably cannot continue and they certainly cannot take any more subsidized children, so basically they would not have the kind of mix you have. That is their big concern about coming here today.

**Mrs Quaglia:** I cannot talk for somebody else.

**Mrs Cunningham:** Thank you very much. You have been most helpful in your response to my questions.

**Mr Bisson:** I have just two questions. It is interesting that you bring a perspective that we have not heard today, somebody who has done both sides.

Interjections.

**Mr Bisson:** We have another discussion here.

**The Chair:** Can we have some order? Order.

**Mr Bisson:** You bring a different perspective in regard to somebody that has operated day care in both sectors, mind you for a short time in one and also a short time in the other. One of the things we have heard over and over again from many of the day care operators who have come before us today and some of the parents is that if you move to the non-profit sector somehow the parents lose their choice. I wonder if you can speak on that. Do you find, now that you have gone over to the non-profit sector, that parents somehow have less choice when it comes to the question of the decisions and whatever happens with day care?

**Mrs Quaglia:** I do not understand the question. What do you mean when you say you are losing your choice?

**Mr Bisson:** The allegation we have heard is that going over to the non-profit side of day care, if we were to eliminate the private day care centres altogether, somehow parents would lose their choice in regard to trying to find quality day care. I have a problem reckoning that, because from what we have seen in some of the studies that were

presented to us today there are good private day care centres out there, there are good non-profit and there are bad on both sides, but overall the non-profit centre tends to deliver higher-quality care for the child, by and large. The argument is put forward by the private day care operators that if you moved away from having any private day care within the system, parents would lose their choice when it comes to accessing what day care centre they think is best. Do you think that is a genuine concern?

**Mrs Quaglia:** I do not think so. We have a public board of education and a separate board of education and there are still parents who want to send their children to private schools. They can do so and nobody is in their way. They have the choice in primary school, they can even have the choice in high school, so I imagine they can have the same choice in day care, provided there is some private day care over there willing to give service.

**Mr Bisson:** The last question that I have is, now that you have moved over to a non-profit day care centre, are you finding that you have more or less parental involvement in the day care centre? Again, one of the things that I have heard from people in my community is that somehow or other in the non-profit sector there is more parental involvement, and people in the private day care centre say that already happens within the private sector. Do you find a difference now that you have moved over to non-profit, that there is more parental involvement?

**Mrs Quaglia:** The parents are invited to give their opinions or whatever. It depends on their own perspective of how much they want to get involved. We have in our centre all these fund-raising projects and things like that. When we send menus they are supposed to give us their ideas. It is the same when they come to observe the program; we have an open house. Of course, we are open to any ideas. Usually at the end of any of our newsletters or conversations we are very open to any concerns.

**The Chair:** Thank you very much for coming.

Our final presentation of today is from Marg Haynes.

**Mrs Cunningham:** Mr Chairman, just while the next presenter is coming to the mike, I am finding it increasingly difficult to sit here and listen to a question with regard to quality when the minister herself suggested to us that it is not an issue. I think that we as elected officials in Ontario today owe it to the ministry staff, the program supervisors who are responsible for implementing and making certain that the regulations and quality standards are in place, to support them in their work. I think it is wrong to sit here and suggest that the quality in private day care centres—

**Mr Perruzza:** On a point of order, Mr Chair.

**The Chair:** There is a point of order.

**Mrs Cunningham:** That is fine. Maybe he can wait until I finish and then he will really know if he has one or not. It is a good practice to listen to the end of a person's sentence, and I have been sitting here trying to do that all day.

**The Chair:** The point of order is?

**Mr Perruzza:** I believe there is an established process. We are all allocated a certain amount of time.

**The Chair:** That is not a point of order.

**Mr Perruzza:** We are getting ready to listen to the next person who has committed some time to us and we are a little behind time in listening to her. Maybe Dianne can save—

**Mrs Cunningham:** You are taking up my time. If you would keep quiet, I could finish my sentence.

**Mr Perruzza:** You can save your comments for—

**The Chair:** Through the Chair.

**Mrs Cunningham:** You are the wrong person to talk about process. Mr Chairman, I would like to finish my sentence for the record.

**Mr Perruzza:** She is making—

**The Chair:** You can finish your sentence for the record and then we will listen to the presenter.

**Mrs Cunningham:** Is this a point of order or is it not?

**The Chair:** Let's just have you finish the sentence.

**Mrs Cunningham:** I would like to without interruption.

**Mr Bisson:** Was that a point of order or just a point of information?

**Mrs Cunningham:** No. I did not ask a point of order, I asked for permission, just as my colleague here did, just as you have twice. It is a matter of courtesy.

**Mr Perruzza:** No, I interjected on a point of order.

**Mrs Cunningham:** You interject on everything. Interjection.

**The Chair:** Mr Mammoliti, Mrs Cunningham has the floor.

**Mr Mammoliti:** I am not talking. I would like to hear what she has to say.

**Mrs Cunningham:** I would like to say that I think we are being discourteous to the ministry staff who are responsible for enforcing the standards in our child care centres by making comments, unlike the minister herself, and that is, the jury is not out on quality of day care in Ontario. We have already received twice today, maybe more times today, in the presentations the most recent survey, which says, yes, the licences in some 5% or 4% in either centres right now are up for—whatever you want to say. They are not up for renewal. Many are up for renewal, but they are up for a special review.

I think we are speaking very highly of the standards in Ontario and we should be proud of it, because I could not have said the same thing even five years ago. I am particularly proud of it, and I think it is wrong to make the inference to the questioner, as we did.

**Mr Perruzza:** I would like to have a minute to respond.

**Mrs Cunningham:** I think you should respond if you know something, and under the circumstances, you should not respond.

**The Chair:** We do have a presenter waiting.

**Mr Klopp:** You only comment on something worth commenting on.



**Mrs Cunningham:** That is right. You do not know about it. You go out and find out about it and come back and I will listen to you. You have to go to the day care centres and get yourself involved.

**Mr Perruzza:** Whenever there are kids involved, quality of care, the best possible service, is always an issue and should always be an issue and should not be put on the back burner, and I do not care what you say.

**Mrs Cunningham:** I do not think you should put it on the back burner.

**Mr Perruzza:** You get out there.

**Mr Mammoliti:** Mr Chair, I do want to touch on something. Quite frankly, this is very important. Frankly, quality of care does matter to me.

**Mrs Cunningham:** It matters to me. I am just saying we have good quality out there and we have standards.

**Mr Mammoliti:** I would like to speak, Dianne.

**Mr Perruzza:** We should not discuss it. There are ministry people looking after it.

**Mr Mammoliti:** It does matter to me. It matters to my constituents, and I think I would be serving us an injustice if I were not to ask the pertinent question. For you to say, Dianne, that the minister said something and therefore you should all just—

**Mrs Cunningham:** You are not even getting in Hansard, so why do you not just be quiet.

**Mr Bisson:** Mr Chairman, on a point of order: Can we have order in the meeting and proceed with the deputation, please.

**The Chair:** No one has been recognized by Hansard for about five minutes. They were having a nice conversation here, which I did not really believe I was going to stop, given the evidence I had had today of the behaviour of the committee as a whole. I chose to stand and wait.

1720

MARGARET C. HAYNES

**The Chair:** Good afternoon, Ms Haynes. Sorry for the interruption, but it has been a long day. We appreciate your coming this afternoon and recognize that things are a little bit late and maybe we are keeping you. If you would like to introduce yourself for the purposes of Hansard, if you are representing any organization, you might let us know about that and you may commence.

**Ms Haynes:** Thank you. I would appreciate your attention. My name is Margaret Haynes. I am a single mother and a taxpayer. I used to be an ECE teacher for 11 years. I am not any longer, but I am very much committed to quality care for children, seeing I have children who do attend day care. I think it has been a long day and everybody is tired and somewhat agitated, so I am not going to try taking up too much of your time. I am sure that everybody has a few sheets of paper with my name on it and basically what I had to say.

For a long time, and I think it still is true, day care has been a woman's responsibility, her career, and if she wanted a business, that was one she could get. Since it was not a profession as professions were considered, it was left

to women, and they have done a great job. Surprisingly, it was women, independent operators, who did take day care and bring it to where it is today. But for some reason, now it has become a newly recognized profession, the government, which is predominantly male, seems to think it can run it a lot better.

Presently we have independent child care systems that are predominantly directed by women, employing women and being used by women. I think I am safely correct when I say that I think the majority of the users of day cares are most likely single mothers. This particular aspect of child care provides a valuable and easily accessible service to the women and families they serve. The families and children are happy and secure at present with the system and structure they have. That is in no way to say it is perfect, but I do believe it is as good, if not better, than its competition. The providers are reliable and consistent, and that makes it a lot easier for me as a mother, and I am sure I speak for a lot of other mothers, to leave our children with them every day. The children and these providers know each other.

Why then are we trying to disrupt the lives of these children, not to mention increase our unemployment rate, by implementing a universal non-profit system? Personally, and as a personal point, "universal" translates to me as "social"—government control and taxpayer funded. Not too long ago the federal government announced in its 1992 budget its intention not to proceed with a universal day care plan, as it was thought to be too costly. I am wondering what makes us think we can carry and support that same kind of system.

My question is, and always has been, how does the government plan to retain current independent child care workers and operators in their jobs? What assurances are they going to give to me as a parent, and other parents, of continued high-quality and accessible service? Well, convert to non-profit, but from what I understand, and I am no finance person and no accountant, that is a very costly business.

I am assuming that the independent operators will have to be compensated to convert their businesses, which raises my next question. Just how much money are you going to give them, and where are we going to get this money from? The last time I heard the Premier and the Treasurer, they were calling for wage increase restraints and the possibility of increased taxes. Like I said before, I am not a mathematician, but in my calculation—it could be wrong, it could be right—I believe the private child care sector supplies the province with approximately 22,000 or 23,000 taxpayers annually. If through conversion to non-profit jobs are lost, and I am sure they will be, that will mean a higher unemployment rate, a more burdened welfare and UI system, and last but by no means least, more taxes from the already dwindling poor working population.

Then there is the freedom of choice. If I cannot have freedom to choose my child's or children's day care, what would make me believe I will have a say in the quality of the service I will receive? If somebody starts choosing my

day care centre for me, how long is it going to be before they start choosing my doctor and dentist etc.

I do believe as a parent, and I have spoken to a lot of other parents, that we are capable of making our own choices when it comes to day care. However, we do need some help and we would appreciate it if we got it in the way of increased subsidy spaces in existing day cares. Maybe the government would like to provide us with more inspectors who would enforce and maintain the present standards. But I do not believe that a universal day care system is what we need, as it will only mean loss of jobs and reduced productivity and revenues but added pressure on our already exhausted social systems.

I have every confidence in this government's commitment to women and children and believe it will find another way of enhancing our present day care system without disrupting our lives and our children's lives, not to mention our paycheques, because I believe those are luxuries we cannot afford in Ontario. Thank you for listening.

**The Chair:** Thank you.

**Ms Haynes:** You are welcome.

**Mrs Cunningham:** You have been here most of the day, I think.

**Ms Haynes:** No, I have not been.

**Mrs Cunningham:** You have just missed quite a day.

**Ms Haynes:** No, I was unfortunate; I had to work.

**Mr B. Ward:** That is fortunate.

**Ms Haynes:** Well, that too.

**Mrs Cunningham:** You are the first person, I think, who has said you do not agree with the ideology of universal child care. I suppose what you have impressed upon me today is your determination in that position. Is it mainly because Ontario cannot afford it, or is it because you do not think it should be the right of every parent, or do you just know that it is not a requirement now, that it is not something every family wants or needs?

**Ms Haynes:** For one, I do not think it is what every family wants and needs. Second, I think that every parent should be free to choose the day care he or she wants for his or her child. I do not need to tell anybody here that we cannot afford it. We cannot. If we could afford it, then I guess civil servants would get their increases and my employer will not tell me she cannot get her per diem from the government so I cannot have my increase. We already have quality day care in this province.

**Mrs Cunningham:** Thank you for saying that.

**Ms Haynes:** You are welcome.

**Mr Jackson:** Margaret, I have had occasion to hear you speak before, and you are unusually reserved today.

**Mrs Y. O'Neill:** Tired.

**Ms Haynes:** That too.

**Mr Jackson:** Yes.

**Ms Haynes:** I must admit I do not like the behaviour. I find it kind of annoying to my nerves.

**Mr Jackson:** You are referring to what you see on question period as well, I assume.

**Ms Haynes:** Yes.

**Mr Perruzza:** He is something else.

**Mr Jackson:** It is true.

**Mr Perruzza:** You are a piece of work.

**Ms Haynes:** It is the truth.

**Mr Jackson:** We are a little late for feeding time over there.

**Ms Haynes:** I can tell. They did not have very good day care teachers.

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**Mr Jackson:** Margaret, one of the concerns that has been expressed was this notion of quality, yet the most recent stats show that is no longer an issue. What is now surfacing and where we cannot get clear information from the government is that an increased number of non-profit centres are in financial difficulty. In fact I attended a meeting a year and a half ago of the Close Avenue Daycare centre, which is a community-based centre. I was attending a public meeting where they were informing the parents that they were cancelling their meals starting the next day, which was a violation of the Day Nurseries Act. I took it to the then minister, Ms Akande, and she was horrified. But there are several examples of centres that are not operating properly by virtue of the fact that they are in financial difficulty.

How do you feel as a taxpayer, as a worker, knowing the struggles that are going on in your centre when these other centres simply turn to the government and say, "Bail us out, bail us out, bail us out"?

**Ms Haynes:** The way I feel is that, first, a number of day cares are given a lot of revenue to begin with, to start up, way more revenue than private or independent centres are ever given. But the thing is, I have had experience in working with non-profit agencies and, to me, non-profit just means that you do not show profit at the end of the year; it does not mean you do not make any money or you do not have any money.

Second, if you have a source of getting funds and you know it is easily accessible to you, then you do not really care, because if you run into any difficulty, there is always the government to bail you out. That is what happens.

**Mrs Y. O'Neill:** On a point of information, Mr Chair: I think we have to clarify something Mr Jackson just said.

**The Chair:** You will have your opportunity, Mrs O'Neill.

**Mrs Y. O'Neill:** But this is a point of information.

**The Chair:** We are going in rotation. Mr White.

**Mr White:** Thank you, Ms Haynes. I was very impressed with you. Mr Jackson says you are sounding a little subdued today, but I am very impressed with how solid and practical a woman you seem to be. How many children do you have, Ms Haynes?

**Ms Haynes:** Two.

**Mr White:** How old are they?

**Ms Haynes:** One is fourteen and a half and one is almost three.



**Mr White:** Is your three-year-old in someone else's home or in a day care setting himself?

**Ms Haynes:** She is in a day care centre.

**Mr White:** When you choose a day care centre, you probably want the best quality for your children. Right?

**Ms Haynes:** Yes.

**Mr White:** It would not matter to you whether that was private or non-profit or for-profit or church-run or whatever.

**Ms Haynes:** No, if that is the best possible care.

**Mr White:** So when you are making an investment along those lines, when you are putting your money into a centre, you want to have the best return on your dollar.

**Ms Haynes:** Yes.

**Mr White:** You would not spend \$1,000 more a year for a for-profit centre than for a non-profit centre.

**Ms Haynes:** Would you care to repeat that?

**Mr White:** Would you spend more money to look after your children simply because it was a for-profit centre?

**Ms Haynes:** If that for-profit centre provided me with the care I wanted, then I would spend the money.

**Mr White:** If that for-profit centre provided you with no more care than the church-run centre or the community-based centre, would you spend more money for that?

**Ms Haynes:** I would not spend more money providing it was accessible to me.

**Mr White:** Okay. So as far as you are concerned, what is important is value and quality.

**Ms Haynes:** Yes.

**Mr White:** Regardless of whether you are giving someone profit or not.

**Ms Haynes:** That is it.

**Mr White:** Do you think that should be the same motivation the minister and the government should use?

**Ms Haynes:** Yes, I think it is.

**Mrs Y. O'Neill:** Margaret, thank you very much. You really did hit on almost every single point and summed up our day very well. This government initiative is costing \$75 million, as best we can understand. That is a lot of money. The allocation provides no new spaces. It does not provide one more space. It does not really provide any new choices. We are not sure it provides any new jobs. In fact, we are thinking it probably leads to job loss, as you have intimated. There is certainly no more accessibility than we have at the present time.

I have had senior bureaucrats both at regional levels and in the central offices tell me it is a system we cannot afford. Our hearings here are based on the effect this will have on women. I think you have a real appreciation of that, the way you began your brief. Could you sum up for us from your experience and knowledge what effect you see this initiative—\$75 million, no new spaces—having? What do you see and how will it affect women?

**Ms Haynes:** Seventy-five million dollars; that is a lot of money.

**Mrs Y. O'Neill:** It sure is.

**Ms Haynes:** I do not know. We elected a government—I certainly did—that we thought would look after us. If they are going to spend \$75 million and not create one new space—

**Mrs Y. O'Neill:** It may be more than \$75 million.

**Ms Haynes:** —whatever—I think there is something definitely wrong there. Like I said, day care is predominantly operated by women. The independent child care centres employ women and the service—

Interjection.

**Ms Haynes:** Pardon?

**Mrs Y. O'Neill:** You just have to answer me, Margaret. The others are out of order at the moment.

**The Chair:** Just speak through the Chair.

**Ms Haynes:** The service of caring for these children—they are mostly single mothers' children. I do believe that if the universal system is implemented and these women are forced to give up the businesses they have striven for long and hard—and we are being told there are going to be no new jobs created under this system—it is going to mean a lot of unemployed women out there—

**Mrs Y. O'Neill:** That is our fear.

**Ms Haynes:** —who will not be able to support their families. A lot of them presently do that as sole-support parents.

**Mrs Y. O'Neill:** Thank you for your honesty, sincerity and credibility.

**The Chair:** Mrs Poole, you have about a minute.

**Ms Poole:** I actually want to table with the committee some late-breaking information, since we do not seem to be able to get much from the ministry.

**The Chair:** Are you speaking to Ms Haynes?

**Ms Poole:** You mean I actually have a minute to ask questions? The impact of this conversion policy, which is not yet a plan because they do not know how it is going to operate on women, is something we have been particularly concerned about. Do you see that it is going to have a dramatic impact on the female child care workers? Is it going to have a dramatic impact on the female operators? Is it going to have an impact on the parents who bring their children to your centre, and is it going to have an impact on the children?

**Ms Haynes:** I think children need consistency in order to grow up to be stable. If this plan is implemented, we are going to have all these women unemployed. I do not need to tell anybody here that women already face a lot of insurmountable barriers in employment. A lot of them are paid 65 cents for every male dollar. If you have a job to give, are you going to give it to a woman as opposed to a male? No. It would be like returning women to the postwar age, back in the home.

Some of them do not even have a home if they have no job, and that is the bottom line. I am told about and I hear every day of all the children in Ontario who live in poverty. If then their mothers have no jobs, I guess they are going to live in more poverty, but nobody seems to be too concerned about that anyway.

**Ms Poole:** Unfortunately, what you have said is true.

**The Chair:** Thank you. We appreciate your presence here with us today. This completes the public hearings.

**Ms Poole:** I have some information I would like to table with the committee. We have had difficulty getting information from the Ministry of Community and Social Services as to how this conversion plan is to work, and any information. Notwithstanding the fact that there is a moratorium, apparently they are now sending out information to the various day care operators, so I would like to table with this committee one of these packages from Comsoc to the operators.

**Mr Bisson:** Before we break, from the government side, I just want to clarify a couple of points. On the question of what Mrs Poole just raised now, the government is in the process of developing a conversion policy. Part of that process is to consult with people in the private day care sector in order to come up to an equitable formula for conversion.

The other thing that was raised by, I think, the Conservative, Mrs Cunningham, was the question that the minister only sees this as a quality issue. I do not think that is what the minister is saying. What the minister is saying is that she also sees this as a very important question in regard to the questions and concerns about accountability to both the public and the private, and to the parents at the same time.

**Mr Mammoliti:** Just to add to that, if I may—

**The Chair:** I am just a little concerned that we are getting to the point we are writing the report, and that is the next stage. This is a contentious issue with a lot of different opinions that, hopefully, we will all bring together when we write this report, but I am not totally convinced that will happen. At this stage I am not really willing to consider those kinds of points of view. The committee's mandate is to complete public hearings today, and we have. We are adjourned.

The committee adjourned at 1741.



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